United States Court of Appeals

for the Second Circuit

APPENDIX

74-1327

IN THE

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

against

BENJAMIN MALLAH,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPELLANT'S APPENDIX.

Volume I—Pages 1a to 596.

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Of Counsel.

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DOCKET ENTRIES.

JUDGE POLLACK
73 Crim. 881

THE UNITED STATES

vs.

BENJAMIN MALLAH - Cts. 1, 5, 6, 7
VINCENT PACELLI, JR. - All Counts
ALFRED CATINO, a/k/a Herbie - 1 & 2
ALFRED DE FRANCO, a/k/a Skinny - 1 & 3
BARNEY BARRET - 1
ISMAEL TORRES - 1
PETER SALANARDI - 1
COURTLAND SAMPLE, a/k/a Bucky - 1
ALBERT PEREZ, a/k/a Abbe Perez - 1, 4, 8
AL BRACER - 1
EDGARDO RAMIREZ - 1 & 4
JACK SPADA - 1
JOHN FAZZALARI, a/k/a Fuzzy - 1, 2, 3

PROCEEDINGS

9-20-73	Filed Indictment and ordered sealed. Bench warrants ordered. Duffy, J.
9-27-73	Indictment ordered unsealed. Griesa, J.
	Deft. Catino (atty. present) Pleads not guilty. Bail $50,000. cash or surety. Deft. remanded in lieu of bail.
	De Franco (atty. present) Pleads not guilty. Bail $35,000. P.R.B. signed by De Franco, his wife and brother-in-law. Also to be secured by De Franco, wife's house and brother-in-law house. Deft. remanded in lieu of bail.
10- 9-73	Deft. Barney Barrett (atty. present) application for reduction of bail. Granted. Bail reduced

DOCKET ENTRIES

	to $10,000. cash or surety. Deft. remanded in lieu of reduced bail. Pollack, J.
10- 1-73	A. DeFranco - filed Personal Recongizance Bond secured by two deeds in the sum of $35,000. Acknowledged by Clerk 10-1-73.
10-15-73	A. DeFranco - filed remand dtd. 9-27-73. Deft released from the custody of the Marshal upon posting bond as directed by the court.
10-17-73	A. CATION (sic) - filed notice of appearance by Nancy Rosen, 401 B'way, NYC 925-8844.
10-17-73	PACELLI - filed affdvt. for writ of habeas corpus ad pros. ret: 10-19-73.
10-15-73	Alfred Catino - filed warrant for arrest of deft. & return dtd. 9-26-73.
10-18-73	Filed Govt's affdvt. for writ of habeas corpus ad pros. for Bernard Schmarion deft. ret. 10-19-73.
10-24-73	B. BARRETT - filed CJA FORM 21 appoint of counsel Robert Mitchell, 51 Chambers St., N.Y.C. 10021, Wo 2-0675. Pollack, J.
11- 5-73	B. Barret - filed financial affdvt.
11-13-73	Filed transcript of record of proceedings dtd. 10-19-73.
11-19-73	A. CATINO - filed notice of motion re: severance of trial of deft. from that of his co-deft. V. Pacelli, etc.
11-19-73	A. CATINO - filed memo of law in support of Motion for severance.
11-21-73	B. BARRETT - filed remand dtd. 10-9-73
11-27-73	VINCENT PACELLI, JR. - filed notice of appearance

DOCKET ENTRIES

	of atty: Steven Duke, 127 Wall St., New Haven, Conn. 06520 - 799-0830.
11-27-73	Alfred Catino - Filed affidavit & notice of motion for an order granting various forms of relief - ret. 11-30-73.
11-30-73	Filed deft's (V. Pacelli, Jr.) motion for psychiatric Exam. of Barry Lipsky. -AND- MEMO-END. dtd. this date. This deft. has on two occasions been afforded the Lipsky psychiatric report and it will be made available to his new atty. as well. In all other respects, the within motion is denied. Pollack, J.
11-30-73	Filed deft. Pacelli's motion for production of presentence report in 71 Cr. 614 - AND - MEMO-END. dtd. this date. Motion for disclosure of pre-sentence report of this deft is another prosecutrion (sic) is denied. Pollack, J.
11-30-73	Filed deft. Pacelli's motion to dismiss indictment for violation of fifth amendment rights-AND-MEMO-END. dtd. this date. This deft did not receive use immunity nor were the predicates therefor esgablished. See 2 U.S.C. 884. Deft was not and could not have been under any misapprehension and was represented by able, experienced counsel and voluntarily testified in aid of family relations. Motion to dismiss indictment is totally lacking in fact and merit. Motion denied. Pollack, J.
11-30-73	Filed deft. Pacelli's motion for proudction (sic) of Grand Jury minutes -AND- MEMO-END. dtd. this date. Motion to inspect grand jury minutes in advance of trial is denied. Pollack, J.
11-30-73	Filed deft. Pacelli's motion to strike count 1 on the indictment -AND MEMO-END. dtd. this date. Motion to strike words from the indictment is denied. Pollack, J.

DOCKET ENTRIES

11-30-73	Filed deft. Pacelli's motion to dismiss for lack of evidence. - and - MEMO-END. dtd. this date. "motion denied". POLLACK, J.
11-30-73	Filed deft Pacelli's motion for assignment to difference judgment and certificate of good faith. -and- MEMO-END. dtd this date. Motion is denied. Pollack, J.
11-30-73	Filed deft. Pacelli's motion for severance -AND- MEMO-END dtd. this date "motion for severance is denied". Pollack, J.
11-30-73	Filed deft. Pacelli's motion to produce Grand Jury minutes and to dismiss -and- MEMO-END dtd. this date. Motions denied. Pollack, J.
11-30-73	Filed deft. Pacelli's motion for calendar date for motions, etc. -AND- MEMO-END. "motion granted". Pollack, J.
12- 3-73	Filed memo of law in support of deft's motions to dismiss on grounds of former jeopardy, violations of due process and speedy trial.
12- 4-73	Filed Govt's affdvit. in opposition and in response to deft. V. Pacelli's motions: for production of Grand Jury minites and for dismissal, to produce witnesses, for psychiatric exam, to strike words from the indictment, etc.
12 -4-73	Filed V. Pacelli's motion for discovery and inspection. -AND- MEMO-END. on back dtd. this date. Granted to the extent indicated on the record - otherwise denied. Pollack, J.
12- 4-73	Filed V. Pacelli's motion for bill of particulars. -AND- MEMO-END on back dtd. this date. Granted to the extend indicated on the record - otherwise denied. Pollack, J.
12- 4-73	Filed V. Pacelli's motion to dismiss indictment

DOCKET ENTRIES

for former jeopardy, violation of due process and speedy trial. -AND- MEMO-END on back dtd. this date. Motions denied. Pollack, J.

12- 3-73 Filed CONSENT ORDER - Filed order that Dr. David Abrahamsen examine the deft. B. Barrett to determine his mental competency to stand trial, etc. Pollack, J. 2 certified copies delivered to U.S. Marshal.

11-30-73 Filed papers filed with Mag. Raby for Barney Barrett: docket entry sheet, appearance bond.

11-30-73 Filed papers filed with Mag. Raby for Alfred Catino: docket entry sheet, appearance bond.

12- 5-73 Filed MEMO-END on motion dtd. 11-30-73 for dismissal, etc. Motions denied. See papers and rulings on Pacelli motions referred to herein and court record thereon. Pollack, J.

12- 5-73 Filed MEMO-END. on motion dtd. 11-19-73 for severance....It is not a ground for severance that the deft seeking the same intends to create prejudice to himself by his conduct at the trial. Moreover there are no valid grounds here for a severance. Motions denied. Pollack, J.

12- 5-73 Filed Govt's bill of particulars.

12- 7-73 Filed writ of habeas corpus ad testifacandum for James P. Lavin. Issued writ 12-12-73.

12-17-73 Filed deft Pacelli's motion for protective order-and- MEMO-END. Ample notice has been given on the record to all counsel that they will be held strictly to a proper performance of professional duty. No more need to be said at this time. Pollack, J.

12-17-73 Filed dft. Pacelli's motion to disqualify prosecutor and Govt. witnesses-and- MEMO-END. No

DOCKET ENTRIES

	immunity was requested, authorized, held out or granted to Mr. Pacelli at the trial in USA -v- Sperling 73 Cr 441 and there is no warrant for any lawyer to so suggest or contend. Motion denied in all respects. Pollack, J.
12-17-73	Filed deft. Pacelli's motion for reconsideration of motion to recuse and motion for severance, and for stay of trial-and- MEMO-END. The commencement of the trial is put over to 12-18-73 at 11 AM. The other motions are denied. Pollack, J.
12-17-73	Filed SECOND MEMO-END. on motion dtd. 11-19-73... on rehearing the determinations are adhered to. Pollack, J.
12-21-73	Filed one envelope ordered impounded, sealed and placed in vault rm. 602 of the Clerk's Office. Pollack, J. (court exhibit #6)
12-18-73	ALFRED CATINO - Filed Second Offender Information.
12-18-73	B. MALLAH; V. PACELLI, JR. (Prod. on a writ); A. CATINO; A. DE FRANCO and B. BARRET, t/n Bernard Schmarion (Prod. on a writ) - BEFORE: POLLACK,J. JURY TRIAL BEGUN.
12-19-73	TRIAL CONTD.
12-20-73	TRIAL CONTD.
12-21-73	TRIAL CONTD.
12-24-73	TRIAL CONTD.
12-26-73	TRIAL CONTD.
12-27-73	TRIAL CONTD.
12-28-73	TRIAL CONTD.
1- 2-74	TRIAL CONTD.

DOCKET ENTRIES

1- 3-74	TRIAL CONTD. GOVT. RESTS.
1- 3-74	Filed brown envelope ordered sealed and placed in the vault. Room 602 of the Clerk's Office. (Defendant Mallah's exhibits Qid and Qlis) POLLACK, J.
1- 3-74	Deft. Mallah's motion to dismiss cts. 5,6 and 7 is GRANTED. Denied as to ct. 1. - DEFT PACELLI's motion to dismiss count 4 and Overt Act #1 is GRANTED. - Denied as to cts. 1, 2, 3, 5, 6 and 7 and Overt Act #7. -- ALL MOTIONS of Defts. CATINO, DE FRANCO and BARRET are DENIED. POLLACK, J.
1- 4-74	TRIAL CONTD.
1- 7-74	Trial cont'd. The Court charges the jury. Jury begins deliberating. Deft. Pacelli found GUILTY on counts 1 and 2. Deft. Mallah found GUILTY as charged. Deft. Barret found GUILY as charged. Deft. Catino found GUILTY on counts 1 & 2.
1- 8-74	Trial cont'd. Pacelli and DeFranco-Deft Pacelli found GUILTY on count 6. Not Guilty on each of counts 3, 5 & 7. Pre-sentence report ordered. For sentence 2-26-74 at 10AM in rm. 1305. Writ satisfied. Deft. DeFranco found not guilty. Bail exonerated. Deft. discharged. Pollack, J.
11-21-73	B. BARRETT - filed warrant of arrest of deft. ret. dtd. 9-26-73.
1-29-74	B. BARRETT - filed CJA form 21 appointment and authorization for payment of services of expert, David Abrahamsen, M.D. mailed copies.
1-22-74	V. PACELLI, JR. - filed affdvt. for writ of habeas corpus ad pros. 1-8-74 Writ satisfied. Pollack, J.
2-20-74	Filef Govt's affdvt. for writ of habeas corpus ad pros. ret: 2/26/74. against Vincent Pacelli, Jr.

DOCKET ENTRIES

2-26-74	BARNEY BARRETT - (atty. present) Filed judgment- Deft. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of TEN (10) YEARS. Pursuant to the provisions of T.21, Sec. 841, U.S. Code, the deft. is placed on Special Parole for a term of THREE (3) YEARS, to commence upon the expiration of his confinement. Deft. is given a $25,000 committed fine. Deft. is placed on $100,000 bail pending appeal. Pollack, J. 2/28/74 Issued commitments. ent. 2/28/74
2-26-74	Vincent Pacelli (atty. present) Sentence adj. to 3/5/74 im (sic) Rm. 506. Pollack, J.
2-26-74	Filed deft. B. Mallah's notice of appeal from judgment dtd. 2/26/74. Mailed copies to U.S. Atty. & deft's atty.
2-26-74	ALFRED CATINO - Filed JUDGMENT (atty present). Deft is hereby committed to the custody of the Atty General or his authorized representative for imprisonment for a period of TWELVE (12) YEARS on each of counts 1 and 2 to run concurrently with each other. Pursunat (sic) to the provisions of Title 21, Section 841, U.S Code, the deft is placed on Special Parole for a term of SIX (6) YEARS to commence upon the expiration of his confinement. It is adjudged that the deft is FINED the sum of $25,000 to be paid or the deft is to stand committed until the fine is paid or he is otherwise discharged according to law. Deft is placed $50,000 bail pending appeal. Pollack, J. 3/4/74 Issued commitments. ent. 3/4/74
2-28-74	ALFRED CATINO - filed notice of appeal from judgment dtd. 2/26/74. Mailed copies to Clerk, U.S. Atty, atty. for deft.
3- 6-74	Filed transcript of record of proceedings, dated 12/28/73; 1/2, 3, 7, 8, /74.

DOCKET ENTRIES

3- 6-74	Filed transcript of record of proceedings, dated 12/19, 20, 21, 24, 26, 27/73.
3- 7-74	B. BARRETT - filed notice of motion for appeal (sic) pending appeal.
3- 7-74	Filed MEMO-END. on motion dtd this date. Bail fixed at $10,000. pending appeal, on govt's consent and on condition that this appeal be expeditiously processed. Pollack, J.
3- 6-74	BARNEY BARRETT - filed notice of appeal from judgment dated 2/26/74. Mailed copies to deft. & U.S. Atty.
3- 8-74	BARNEY BARRETT - filed order that leave to appeal in forma pauperis is granted. Pollack, J.
10-15-73**	ALFRED DE FRANCO - Filed warrant of arrest of deft. & return dtd: 9/26/73.

INDICTMENT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
UNITED STATES OF AMERICA,

-v-

BENJAMIN MALLAH,
VINCENT PACELLI, JR.,
ALFRED CATINO, a/k/a "herbie",
ALFRED DE FRANCO, a/k/a "skinny",
BARNEY BARRET, a/k/a "Smarion",
ISMAEL TORRES,
PETER SALANARDI,
COURTLAND SAMPLE, a/k/a "Bucky",
ALBERT PEREX, a/k/a Abbe Perez,
AL BRACER,
EDGARDO RAMIREZ,
JACK SPADA, and
JOHN FAZZALARI, a/k/a "Fuzzy",

S 73 Cr. 881

Defendants.
----------X

The Grand Jury charges:

1. From on or about the 1st day of January, 1971, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, BENJAMIN MALLAH, VINCENT PACELLI, JR., ALFRED CATINO, a/k/a "Herbie", ALFRED DE FRANCO, a/k/a "Skinny", BARNEY BARRETT, ISMAEL TORRES, PETER SALANARDI, COURTLAND SAMPLE, a/k/a "Bucky", ALBERT PEREZ, a/k/a Abbe Perez, AL BRACER, EDGARDO RAMIREZ, JACK SPADA and JOHN FAZZALARDI, a/k/a

"Fuzzy", the defendants, and Herbert Sperling, Joseph Conforti, Louis Mileto and Barry Lipsky, named herein as co-conspirators and not as defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully, (sic) intentionally and knowlingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants and co-conspirators unlawfully, wilfully (sic), intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances, the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. In or about July, 1971, the defendant EDGARDO RAMIREZ delivered two cans of lactose to 1420 Third Avenue, New York, New York.

2. In or about November, 1971, co-conspirator Herbert Sperling delivered to defendant VINCENT PACELLI, JR. two kilograms of heroin.

3. In or about September, 1971, the defendant VINCENT PACELLI, JR. delivered approximately two kilograms of heroin to defendants ALFRED CATINO, a/k/a "Herbie" and JOHN FAZZALARI, a/k/a "Fuzzy".

4. In or about the month of December, 1971, the defendant VINCENT PACELLI, JR. delivered one kilogram of cocaine to the defendants ALFRED DE FRANCO, a/k/a "Skinny" and JOHN FAZZALARI, a/k/a "Fuzzy".

5. On or about August 16, 1973, the defendant BENJAMIN MALLAH had a conversation with co-conspirator Herbert Sperling in front of 844 Seventh Avenue, New York, New York.

6. In or about the month of December, 1972, the defendant BARNEY BARRETT was in the vicinity of 844 Seventh Avenue, New York, New York.

7. On or about January 10, 1973, the defendant JACK SPADA had in his possession approximately two and one-half kilograms of heroin.

(Title 21, United States Code, Section 846.)

INDICTMENT

COUNT TWO

The Grand Jury further charges:

In or about the month of September, 1971, in the Southern District of New York, VINCENT PACELLI, JR., ALFRED CATINO, a/k/a "Herbie" and JOHN FAZZALARI, a/k/a "Fuzzy", the defendants, unlawfully, wilfully (sic), and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately two kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2).

COUNT THREE

The Grand Jury further charges:

In or about the month of December, 1971 in the Southern District of New York, VINCENT PACELLI, Jr., ALFRED De FRANCO, a/k/a "Skinny" and JOHN FAZZALARI, a/k/a "Fuzzy", the defendants, unlawfully, wilfully (sic) and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2).

INDICTMENT

COUNT FOUR

The Grand Jury further charges:

In or about the month of October, 1971, in the Southern District of New York, VINCENT PACELLI, Jr., ALBERT PEREZ, a/k/a Abbe Perez and EDGARDO RAMIREZ, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately two kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2).

COUNT FIVE

The Grand Jury further charges:

In or about the month of July, 1971, in the Southern District of New York, BENJAMIN MALLAH and VINCENT PACELLI, Jr., the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2).

INDICTMENT

COUNT SIX

The Grand Jury further charges:

In or about the month of November, 1971, in the Southern District of New York, BENJAMIN MALLAH and VINCENT PACELLI, Jr., the defendants, unlawfully, intentionally and knowingly did distribute a Schedule I narcotic drug controlled substance, to wit, approximately two kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2).

COUNT SEVEN

The Grand Jury further charges:

In or about the month of December, 1971, in the Southern District of New York, BENJAMIN MALLAH and VINCENT PACELLI, Jr., the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2).

COUNT EIGHT

The Grand Jury further charges:

On or about the 18th day of November, 1971, in the

INDICTMENT

Southern District of New York, ALBERT PEREZ, a/k/a Abbe Perez, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 121.7 grams of cocaine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2).

FOREMAN

PAUL J. CURRAN
United States Attorney

TRANSCRIPT.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

BENJAMIN MALLAH, VINCENT PACELLI, JR., ALFRED CATINO, a/k/a Herbie, ALFRED DEFRANCO, a/k/a Skinny and BARNEY BARRETT, T/N Bernard Schmarion,

Defendants.

73 Cr. 881

Before:

HON. MILTON POLLACK,

District Judge
and a Jury

New York, December 19, 1973
Room 706 - 10 a.m.

APPEARANCES:

PAUL J. CURRAN, Esq.,
United States Attorney for the Southern District of New York,
By: James P. Lavin, Esq., and
James E. Nesland, Esq.,
Assistant United States Attorneys

JAMES M. LaROSSA, Esq.,
Attorney for defendant Benjamin Mallah,
Michael Freyberg, Esq., of Counsel

STEVEN DUKE, Esq.,
Attorney for defendant Veincent Pacelli, Jr.

APPEARANCES
(Continued)

NANCY ROSNER, Esq.,
Attorney for defendant Alfred Catino

PETER J. PELUSO, Esq.,
Attorney for defendant Barney Barrett

- - -

(A jury was duly impanelled and sworn.)

(In the robing room.)

THE COURT: Gentlemen, this morning Mr. Angelo Pompei, Juror No. 8, came to see me and stated that he had been, as he described it, doing some soul searching. I would like to have him state to you on the record here just what it is his soul searching has been, and what he has to say in that regard.

In addition to his soul searching, he also mentioned that he had a vacation coming up on Friday; which of course, I pay no attention to.

Now what is it, Mr. Pompei?

MR. POMEPI: Well, as I said, your Honor, yesterday I thought I was -- could give an impartial decision and knowing I was going on vacation, I really didn't want to use this as a crutch and I didn't say anything when you had

asked the jury, as I say I thought I could be impartial but after thinking it over overnight, I don't think that I can be.

THE COURT: For what reason?

MR. POMPEI: There has been in the family, not the immediate family but second cousin who passed away, it was either hepatitis because of a needle or the dope, and at present two members of the family are using drugs; again this same family, your Honor.

THE COURT: Does any counsel want to ask any questions?

Are you saying to me, Mr. Pompei, that you cannot in good conscience be fair and impartial?

MR. POMPEI: Yes, sir, I am, your Honor.

THE COURT: And that you feel prejudiced against one or another side in this case?

MR. POMPEI: Yes, your Honor.

THE COURT: Mr. Mitchell, what do you say we should do under these circumstances?

MR. MITCHELL: Your Honor, I think the Court should excuse him, but I am faced with a dilemma in the fact that in picking the jury, we relied on the fact that he was going to be sitting. We waived, I am just speaking for myself, I concurred in the waiving of challenges. Had it come out

when Mr. Pompei was in the jury box, and had the Court excused him at that time, the situation might have been a little bit different. I just want to call it to your Honor's attention. I think he should be excused though by the Court.

THE COURT: Mr. Duke?

MR. DUKE: I agree with Mr. Mitchell, your Honor.

THE COURT: Counsel?

MR. FREYBERG: I agree with Mr. Mitchell also, your Honor.

MR. PELUSO: I agree, Judge.

THE COURT: Mr. Lavin?

MR. LAVIN: I agree, your Honor.

THE COURT: All right, Mr. Ompei, you will be excused from service in this case on the application, on the disclosures that have been made, and you will report back to Room 109 and the clerk down there will take care of any further matters in connection with it.

I want the clerk to be notified that this man has been excused but he is not excused from jury service, and I want the clerk to see to it that he is held available for jury service during the full term of his service and he is not to be excused on account of any holiday or vacation that he may have in mind.

Now, that calls for seating the first alternate in place of the excused juror, and we have a further problem that I am told that Mrs. Estelle Williams, Juror No. 11, hasn't showed up yet; but I know of no problem as to her as yet, except possibly the storm conditions that have delayed her.

We will wait a few minutes for her.

THE COURT: You are Benjamin Mallah?

DEFENDANT MALLAH: Yes.

THE COURT: This is defendant Benjamin Mallah.

I spoke with Mr. Mallah's attorney on the telephone last night, Mr. James La Rossa, and Mr. La Rossa advised me that he was engaged in summingup in a criminal case in Kings County, and that that summation would take place some time this morning; and that in the meantime he desired to have Mr. Michael Freyberg, an attorney duly licensed to practice law to stand in for him during his temporary absence from the courthouse.

Is that satisfactory to you, Mr. Mallah?

MR. FREYBERG: Your Honor, may I just add one thing. Mr. Mallah has indicated that he consents to my appearance here as of counsel to Mr. La Rossa for the purpose of the opening and direct examination, but does not consent to waive the right of Mr. La Roosa to cross

examine any witness, and Mr. La Roosa wishes to reserve the right to cross examine any witness.

THE COURT: Yes, but that does not -- you are not excluding your presence and services during the cross examination of the witnesses by other co-nsel?

MR. FREYBERG: No, certainly not, other than to reserve Mr. La Roosa's right.

THE COURT: I had told Mr. La Roosa, as the time factor seemed to be becoming available here, that in all probability, his turn to cross examine will not be reached before he actually becomes available, and we will keep the witness available for his cross examination, but my understanding very clearly was that you, with the consent of the client, would act as counsel for Mr. Mallah in all aspects except the actual cross examination of the witness will be conducted by Mr. La Roosa himself.

MR. FREYBERG: That is correct, your Honor.

THE COURT: Is that satisfactory to you?

DEFENDANT MALLAH: Yes.

THE COURT: Thank you very much.

(In open court; jury present.)

THE COURT: Where is Mrs. Rosner? Does anybody know where Mrs. Rosner is?

Mr. Catino, do you know where Mrs. Rosner is?

Where is Mr. Catino?

MR. LAVIN: He isn't in the courtroom.

THE COURT: Mr. Catino, where is Mrs. Rosner, do you know?

DEFENDANT CATINO: You want me to call the office?

(Mrs. Rosner entered the courtroom.)

THE COURT: Make a note that it is 10:35.

MRS. ROSNER: I am sorry, your Honor. I was unavoidably delayed in travel. It won't happen again.

THE COURT: Mrs. Mungin, we have excused one of the jurors, and you will take your place in his place. Would you please move over to the seat No. 8. Will you swear the juror, please?

THE CLERK: Are all counsel and defendants ready to proceed?

THE COURT: You may open to the jury, Mr. Lavin.

MR. LAVIN: Yes, your Honor.

Judge Pollack, ladies and gentlemen of the jury. As his Honor informed you yesterday my name is James Lavin and I am an Assistant United States Attorney and I will be prosecuting this case for the government. Seated at my table will be Mr. James Nesland who is also an Assistant United States Attorney. He helped prepare this case and he will try it, and there also will be a special agent

of the Drug Enforcement Administration who will help us in this case.

As you were told yesterday this is a criminal case. These five defendants on trial are charged with conspiring in the first count of the indictment to violate the federal narcotic laws.

It is not my purpose to tell you the law in this case but any from the outset you should understand that a conspiracy under the law is a crime in itself. It is an agreement to perform some illegal act, in this case to violate federal narcotic laws, which prohibit the distribution and possession with the intent of distributing heroin and cocaine.

These five defendants on trial before you, Mr. Mallah, the gentleman in the mustache and the glasses, Mr. Pacelli, the gentleman in the blue suit and black rimmed glasses, Mr. Catino, the gentleman in the brown suit sitting against the rail, Mr. De Franco, the gentleman in the white jacket sitting against the rail, and Mr. Barrett, the gentleman with the checked jacket, these are the only persons whose guilt or innocence you must determine, but in order to do that you are going tohave to determine as far as the conspiracy count is concerned, the participation of many other individuals; because ladies and

gentlemen, the evidence will prove we submit that this was a huge conspiracy whose purpose was to distribute and possess with the intent to distribute narcotics and distribute them in New York City.

So that you will understand, you are going to hear a lot of names and so that you will understand them, the government has in the indictment other papers a list of people who the government submits were conspirators who conspired with these five individuals to violate the laws. I am just going to mention a few of those names. There are more than a few, so that when you hear the testimony of the people youwill know -- you will recognize the names. The government has indicated that Herbert Sperling is a conspirator, Louis Mileto, Barry Lipsky, Norman Goldstein, Jack Bless, Juan Serrano, Louis Valentine, Susan Weyl, Edward Schworak, John Ramos, Carlo Lombardi, Leo Guarino, John Capra, Nicholas Lugo, Peter Aponte, Mark Reiter, John Caruso, Jack Spada, Albert Perez and John Fazzalari.

All these people are not on trial before you and it is not your function to determine their guilt or innocence. The government submits that they are co-conspirators and you will be instructed as to the nature of their participation later on.

I'd like to briefly outline what the government

submits the testimony of the witnesses will show. The testimony the gobernment submits will show thatthere was a conspiracy as between all these individuals to distribute heroin and cocaine, and that each individual in this conspiracy including the ones on trial and the ones I have named, as well as the others whose names you will hear had a particular role to play. The government's evidence will show that Mr. Pacelli had large sources of cocaine which he used to distribute to various customers and one of his customers was Mr. Mallah and Mr. Sperling.

Mr. Pacelli had a worker who will be a government witness, an individual by the name of Barry Lipsky. Barry Lipsky was Mr. Pacelli's principal worker and he will tell you in essence the operation of Mr. Pacelli's part in the scheme.

It was the testimony -- the testimony will show it was Mr. Pacelli's function or operation to deliver cocaine to among others Mr. Mallah, Mr. Catino, Mr. De Franco; and from Mr. Mallah Mr. Sperling he would receive large amounts of heroin, kilogram quantities, kilogram you will hear testimony is 2.2 pounds; and in addition to distributing cocaine to Mr. Sperling, and to Mr. Catino and to Mr. De Franco he also distributed heroin to them, heroin he obtained from other sources aside from Mr. Sperling.

Mr. Lipsky's testimony will tell you that he was a worker, it was his job to stash and store the narcotics and later on to test them and to make deliveries to various customers. On one occasion you will hear testimony that he delivered quantities of cocaine to a Nicholas Aponte and -- Peter Aponte and Nicholas Lugo who unknowingly sold it to an undercover agent who will also testify in this case. The government's evidence will also show that Mr. Sperling and Mr. Mallah in their own little sphere of things were partners, and it was Mr. Sperling's function to run the day-to-day activities, to direct the workers, and some of the workers are a Mr. Louis Mileto, a Mr. Joseph Conforti, Mr. Conforti will also testify as a witness in this case, and Mr. Barney Barrett was a worker for Mr. Sperling and the government's evidence will show that he distributed, Mr. Barrett, quantities of heroin on various occasions.

Mr. Mallah's side of the business was concerned with money. Mr. Mallah the government's evidence will show was Mr. Sperling's money man. He supplied the money for the purchase of narcotics and he received the proceeds from the sale of narcotics.

There is going to be quite a few witnesses in this case, ladies and gentlemen. A lot of them are going to

be short. A lot of them, first hearing what they are saying the one really making that much sense to you so you should wait until you receive all the evidence in the case before you see the entire picture. One of the witnesses in this case will be the wife of Louis Mileto, a Mrs. Cecile Mileto who will tell you about her husband's activities in regard to Mr. Sperling and Mr. Mallah and the things she observed on various occasions when she was in the presence of Mr. Mallah and Mr. Sperling. One of the places that you are going to hear a lot about is a barbershop on Seventh Avenue and that was the focal point of meetings between Mr. Pacelli, Mr. Mallah, and Mr. Barrett, and the other conspirators and defendants here.

One other place you will hear is a club at 115th Street at that time. That club was frequented by Mr. Catino and Mr. De Franco and it was Mr. Catino's place of business then. That's where he received and where he paid for or Mr. De Franco paid for narcotics that were delivered to them by Mr. Pacelli, by Mr. Lipsky.

In addition to the conspiracy count which is the unlawful agreement which is a crime in itself the government has charged in the indictment seven substantive counts which you are to concern yourselves with.

Substantive counts are actually violations.

They are charges that on certain dates these defendants, defendants named in the counts actually distributed or possessed with intent to distribute various amounts of narcotics.

Count 2 of the indictment charges Vincent Pacelli, Alfred Catino and John Fazzalari co-conspirators not on trial before you and you are not to consider his guilt or innocence, with distributing approximately two kilograms of heroin in or about the month of September 1971.

Count 3 charges in or about the month of December 1971, Vincent Pacelli, Albert De Franco and John Fazzalari distributed and possessed with the intent to distribute approximately one kilogram of cocaine.

Count 4 charges that in or about the month of October 1971 Vincent Pacelli, Albert Perez and Edgardo Ramirez possessed with the intent to distribute and distributed approximately two kilograms of heroin.

As I mentioned, a kilogram you will hear testimony is approximately 2.2 pounds. It is a European weight.

In or about the month of July 1971, this is Count 5 of the indictment, the defendants Benjamin Mallah and Vincent Pacelli did distribute and possess with the intent to distribute approximately one kilogram of cocaine.

Count 6 of the indictment charges that the

defendants Benjamin Mallah and Vincent Pacelli in or about the month of November 1971 did distribute and possess with the intent to distribute approximately two kilograms of heroin.

Count 7 charges in or about the monthf of December, the defendants Benjamin Mallah and Vincent Pacelli, Jr., the defendants, did distribute and possess with the intent to distribute approximately one kilogram of cocaine.

As I mentioned to you ladies and gentlemen, some of these witnesses the government will call with accomplices. They themselves were members of this conspiracy and they were involved,as deeply involved as the government's evidence will show as the defendants on trial.

And they are not people the government offers to you to take home to dinner. They are people who because of their inside position are able to give you the true version of what happened and a bird's eye view of the operations of this massive conspiracy.

Now, ladies and gentlemen, the government submits that after you have heard all the evidence you will find beyond a reasonable doubt those defendants guilty of the crimes charged in the indictment.

Thank you very much.

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THE COURT: Counsel for Mr. Mallah, open or waive?

MR.FREYBERG: Your Honor, defendant Mallah waives opening to the jury.

THE COURT: Counsel for Mr. Pacelli?

MR. DUKE: Ladies and gentlemen, I am Steven Duke, counsel for Mr. Pacelli. My client, Mr. Pacelli, has pleaded not guilty to all the charges in this indictment, and the defense in this case is that he is innocent. The defense really breaks down into two aspects.

The first aspect,on which I won't dwell and which will become more meaningful to you, as the trial goes along and as you get the instructions at the end of the case from the judge, is that, as Mr. Lavin has suggested, the government charges my client with having conspired with all manner of different people, some of whom Mr. Lavin mentioned, some of whom he did not mention, but you presumably will hear their names.

In short, you will hear a lot of testimony about a lot of people doing a lot of things and saying a lot of things, but when this case is over if you are able to compartmentalize the evidence and remember what

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evidence is presented, credible evidence, against my client, Vincent Pacelli, you will conclude beyond any question of a doubt that the allegation that my client, Vincent Pacelli, conspired from January 1, 1971 until September of 1973 with all of these individuals to engage in a distribution of narcotics, even if you accept every word of the government's evidence, you will conclude I think that the charge is a sham and a farce.

The principal thrust of our defense, however, has to do with the credibility of the evidence that will be put before you. The government will call one Barry Lipsky, as Mr. Lavin has mentioned, an alleged co-conspirator. Mr. Lipsky will testify that he was in the narcotics business and that he worked for my client, Mr. Pacelli.

It is not our concern to contest Mr. Lipsky's claim that he was in the narcotics business. Since he is not on trial and we don't represent him, that is of no great moment, that is not part of our defense. However, it is relevant, and we will prove to you ladies and gentlemen, that Mr. Lipsky's narcotics activities, extensive as he says they are, are irrelevant legally because Mr. Lipsky purchased himself complete immunity

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from all prosecution.

MR. LAVIN: Objection, your Honor.

THE COURT: Mr. Duke, the function of an opening statement is not summation. It is for the purpose of outlining to the jury the anticipated proof by the party. Will you please adhere to that formula.

MR. DUKE: Ladies and gentlemen, we will prove to you that Mr. Lipsky has committed crimes against the United States of America for which if he were punished he would be subjected to imprisonment in excess of 100 years.

We will further prove to you that Mr. Lipsky has made an arrangement with the United States Government whereby he stands no possibility of any sentence or any prosecution whatsoever for any of those crimes..

We will further show through cross examination primarily, that Mr. Lipsky is one of the most cunning, clever and diabolical creatures that you will ever see, either in a courtroom or in your own lives. We will show you a man who will point the finger at anyone who stands to gain anything, a man who has no scruples and no conscience.

Mr. Lipsky will come in here and he will take the oath to tell the truth. He will then tell you

about his claim that he worked with Mr. Pacelli.

We will prove to you, ladies and gentlemen, Mr. Lipsky has taken the same oath that he will take before you, has raised his hand to God and sworn to tell the truth in front of grand juries, in front of other juries like yourselves, and on every single occasion, ladies and gentlemen, he has lied.

MR. LAVIN: Objection, your Honor.

THE COURT: The jury will bear in mind that there may be an important difference between what is proved in a case and what a lawyer says about the case and what he says he intends to prove. Your function in this casd will be to concentrate on what you hear from the witness stand and the evidence that is allowed.

The lawyers will give you their views as to what you are hearing but that's their opinion. What they say is not evidence. What a lawyer says doesn't bind you in the slightest degree. He is representing a client, and he is putting forth that client's position, but you will be guided solely by the evidence as it comes out on the witness stand and measure what is being told to you by counsel against the proof rather than to accept anything that the lawyer says

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as evidence in the case.

The function of an opening statement is to give you some kind of a simple roadmap of understanding of what is going to come out. It is not the moment for arguing with the jury what the effect is of what comes out, and the lawyers are expected to briefly and succinctly put forth their client's position.

Go ahead, Mr. Duke.

MR. DUKE: Ladies and gentlemen, this what I am telling you is what I will undertaketo prove and certainly if I don't prove it I will ask you to disregard it; and I am sure that Mr. Lavin will remind you that I claimed I was going to prove something and didn't.

We will attempt to prove to you, ladies and gentlemen, that Mr. Lipsky, since some time in 1970, has begun a career as a professional witness. That career began, we will show, down in Florida, federal court in the Southern District of Florida, after Mr. Lipsky got in trouble for selling some stolen securities. He went before a federal grand jury. Although he had made a partnership with a fellow named Teresa to distribute those stolen securities for him, Mr. Lipsky went before a federal grand jury and told that federal

grand jury under oath that the person that Lipsky sold these securities for was not Teresa but another man, an innocent man.

We will further show you ladies and gentlemen that later in 1970, in the case in which Mr. Lipsky was indicted, that is, for the stolen stock case, indicted on four counts, Mr. Lipsky made a deal for himself with the federal prosecutor in which Mr. Lipsky participated in the frame of an innocent man, and I expect Mr. Lipsky to admit that on the stand.

Mr. Lipsky, our evidence will show, then came to New York to continue his activities, and that he is now making every effort to purchase complete freedom, complete immunity for all of his criminal acts.

We will also attempt to show that Lipsky is not only a very cunning, unscrupulous crook, but that he is of unsound mind. We will elicit evidence that Mr. Lipsky is the kind of man who not only has no compunctions about implicating innocent people in crimes, he has found it convenient in the course of his activities to assist guilty poeple to avoid punishment, and he succeeded as part of his activities.

He is a man who beats his head against walls, who adopts aliases of big horror show figures, whose

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first love, apart from himself, is horror films. He is a man who will shoot out a television set if he doesn't like the program, and who will throw scales into the Atlantic Ocean if they don't tell him that he weighs what he thinks they should tell him he weighs; in short, a man who is crazy or nearly that.

We will ask you ladies and gentlemen to totally reject the testimony of Barry Lipsky. I am quite sure that when all the evidence is in you will reject that testimony completely.

THE COURT: Mrs. Rosner.

MRS. ROSNER: Judge Pollack, Mr. Lavin, fellow counsel, Madam Forelady, ladies and gentlemen of the jury:

First let me apologize for inconveniencing you this morning in keeping you waiting. I hope it will not happen again.

Yesterday we spent several hours in the process of selecting you 12 ladies and gentlemen, and although I have never sat on a jury and probably never will because of my occupation, I can imagine that during the jury selection process you must feel very much like goldfish in a bowl, being peered at by large, staring eyes, and kind of wondering if maybe there is something

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wrong with you, your hair is not right or something. But you have to be indulgent with us in this regard. We are engaged in a very, very serious business of defending individuals' liberties, and counsel on both sides, for the government and for the defense, make every effort and try in every way to select fellow human beings who appear to us to be open-minded and fair and without prejudice.

So if we stared at you a little too hard I hope you will understand the spirit im which it was done. We have attempted to select people who will come to the jury box and bring to it common sense, good judgment which they exercise in everyday life, but will leave out of the jury box prejudices and biases and sympathies which make us the individuals that we are, which have no place in the judgment of a criminal case. And it is in that spirit that we ask you to evaluate the government's evidence in this case.

As Judge Pollack has already instructed you, the lawyers on both sides of this case, both for the government and for the defense, have no personal knowledge what went on during the periods of time about which you are going to hear testimony. We were going about our various occupations, Mr. Lavin, myself, and

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all the other lawyers.

Frequently when I have encountered people who find out that I am a criminal lawyer, the question arises, can you be convicted? Can you be sent to jail because one man gets on the stand and points a finger at you and nothing else is produced, no other evidence, nothing you hold or touch or see?

And I find that most people who are unfamiliar with criminal law, who have hever sat on juries, are shocked to discover that the word of a single individual can mean the difference between a man's freedom and not having his freedom.

Now, Mr. Lavin just as myself, is representing a client here and that client is the United States Government.

The government came into possession, you might say, of a witness named Barry Lipsky. I expect -- I may be wrong, but from what I know of the case I expect -- that Mr. Lipsky will be the sole source of evidence against my client, Mr. Catino, who is seated against the rail in the brown jacket.

And Judge Pollack will instruct you later on that in evaluating the evidence which you are going to hear from Mr. Lipsky certain principles come into play,

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and among them are the fact that this individual will admit out of his own mouth that on at least four occasions when he has previously raised his hand and sworn to God to tell the truth, on at least four other occasions when other human beings' lives and liberties were at stake, he lied in utter and complete disregard of his oath, to juries very much like yourselves, some of them sitting in this very courthouse.

And Judge Pollack will tell you that the fact that this man is an admitted perjurer and admittedly has disregarded on not one occasion bu8t on many occasions an oath and a responsibility that he has for other people's freedom, that is a fact that you ladies and gentlemen can consider.

You will find out from the evidence from Mr. Lipsky's own mouth, not from other people pointing fingers at him, that he is a person of extremely unstable mental character, really a nut, a guy who sits around early in the morning, when the rest of the world is sleeping, watching horror shows.

Mr. Duke has told you a great deal, and I won't repeat that, about what you will learn from Mr. Lipsky himself and they are admissons that are not easy to get but you are going to hear h im himself admit these

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things to you, and you will learn, and I think you will conclude,when you have finished hearing Mr. Lipsky's testimony, that the evidence that the evidence that he gives you ladies and gentlemen is only as good as the source, and the source is nothing you would ever trust in your own personal lives to make any decision of any importance to yourselves; and I am sure, ladies and gentlemen, that when you are finished listening to his testimony you will decide as people of good common sense that no other individual's liberty should depend on the word of a Barry Lipsky, and I think you will have no hesitation in rejecting what he says to you and in returning a verdict of not guilty.

THE COURT: Mr. Peluso for the defendant De Franco.

MR. PELUSO: Judge Pollack, Mr. Lavin, members of the counsel team, Madam Forelady, ladies and gentlemen of the jury:

I ask you to bear with me. My voice is a little hoarse. I have been under medication for the past couple of days with a big cold that is pretty bad.

I don't intend to be too long in my opening, nut there are some things that I feel I should point out to the members of the jury.

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The government in its opening has given you somewhat of a preview of coming attractions, what they expect to prove. I would like to state to each and every one of you that the defendant has answered this indictment. Mr. De Franco has said, "I am innocent of the charges. I am not guilty."

The charges stem from facts put before a grand jury, as his Honor explained. The defendant was not present before that grand jury. The defendant did not defend himself before that grand jury. The prosecution team was before the grand jury with their witnesses. It was a one-sided affair.

Now, the defendant having stated that "I am innocent of these charges," the burden shifts to the government under our law, under the Constitution, and his Honor will so instruct you. The burden rests with the prosecution to prove the defendant guilty beyond a reasonable doubt.

I am sure you have heard these words many times in courtrooms on television, but these words have a sincere, true meaning. We are dealing here with a man's liberty. Before you render a decision here I ask you, as each witness takes the stand, to look at the witness and listen to the witness and say to yourselves:

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Can I believe this person? Can I believe this man? Can I believe this one? If I had to make the decision that involved me personally or a member of my family, could I take the word of this person?

And I feel certain that when this test is applied to Mr. Lipsky, especially Mr. Lipsky --

MR. LAVIN: Your Honor, I object to that.

THE COURT: The jury has already been instructed as to just what part the lawyer's opening statement or going beyond the opening statement plays. They will await the presentation of evidence.

MR. PELUSO: If I may, I would ask you, in listening to the evidence, keep one factor in your mind, that as his Honor has stated what defense counsel says, what the government says, and for that matter what his Honor states, is not evidence before this court.

During trials I have often seen it happen where a defense counsel may make a gesture, either approving or disapproving of a witness. This means absolutely nothing. The prosecution may do likewise. His Honor may do likewise. His Honor, in talking to defense attorneys, in talking to the prosecution, may make statements that may lead you to believe that his Honor believes or disbelieves the witness. This should

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have no consideration in your mind.

As you sit there it is your function to listen to the witness and apply all of the tests: could I believe this man? In all of my everyday oeprations if I had to make a serious decision could I believe this person?

And remember, as his Honor will tell you, that Mr. De Franco need prove nothing. He was brought into this court, charges were made against him. The burden rests with the prosecution to prove him guilty beyond a reasonable doubt. This law applies to Mr. De Franco, it applies to me, if I were a defendant, it would apply to each and every one of you if heaven forbid you were a defendant.

I ask you ladies and gentlemen to please listen very attentively and I know that justice will be done in this court and I thank you very much.

THE COURT: Mr. Mitchell for Mr. Barrett.

MR. MITCHELL: If your Honor please, Mr. Lavin, fellow members of the bar, Madam Forelady, ladies and gentlemen of the jury:

My name is Robert Mitchell, and my client is Barney Barrett, and I have listened to Mr. Lavin and what he was going to say, and I can say this to you,

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that when this case is over I think that Mr. Barney Barrett is the kind of man that you might invite to your house for dinner, not as Mr. Lavin says in categorizing the government witnesses.

Mr. Barrett is a 60-year-old man who has lead an uneventful life. There are certain things that occurred in his life which become important when you deliberate on his innocence and guilt.

At the age of about six or seven, as happens to young boys, he fell off a roof, was in Gouverneur Hospital approximately a year and a half, had a metal plate inserted in his head, and from that time onin in the neighborhood, there are various names that boys apply to boys, and you can figure out the names that were applied to Barney Barrett.

Thereafter, throughout his life, and you say, "Well, what did he do?" he calls himself a numbers salesman, he is a collector of numbers, tht's been his occupation through the major partof his life, except for periods when he was sent to Bellevue Hospital for observation, periods covering approximately two years when hewas in Central Islip, an institution for the incompetent, if insane, various other institutions.

I am giving you this background although Mr.

Barrett denies any knowledge of the conspiracy, denies any participation in the conspiracy, and Mr. Barrett is only named in the conspiracy. He is not named in the other counts which charge possession and distribution of narcotics. That hecomes important.

Of course the district attorney in his opening said he would prove that Mr. Barrett distributed heroin. In order to distribute it you have to have it, you have to possess it, but there is no count in this indictment that charges Mr. Barrett with any such distribution or possession as a crime.

I want you to remember that if you reach the stage where you deliverate on the innocence of guilt of Barrett.

Furthermore, this indictment allegedly starts in January of '71 and terminates some time in April of 1973 when Mr. Barrett was arrested, but nowhere in the early part of the conspiracy do you hear of Mr. Barrett or will you hear of Mr. Barrett. Even this witness that has been praised by Mr. Lavin and destroyed by defense counsel, this Mr. Lipsky, in all his wanderings around he never knew Mr. Barrett, never had anything to do with Mr. Barrett.

In fact, the only time that Mr. Barrett is

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mentioned by date in the indictment, and those acts that Mr. Lavin referred to, in which he accuses some of the co-defendants of distribution on various dates, those occurred from July through December of 1971, but the indictment first mentions Mr. Barrett in what is referred to as an overt act.

It simply says in or about the month of December, 1972 -- "in or about," that could mean November or January; in other words, the government isn't even sure -- Barney Barrett was in the vicinity of 844 Seventh Avenue, New York.

Now, 844 Seventh Avenue is this barbershop that's been referred to. It's about three doors from the Stagedoor Delicatessen on Seventh Avenue, and approximately a block and a half from where Mr. Barrett lives, and this 844 Seventh Avenue is the place, the site, where Mr. Barrett collected money on numbers.

He was there. The government will introduce photographs showing Mr. Barrett on the sidewalk, Seventh Avenue, possibly in conversation with co-conspirators or even defendants, but nobody will testify to what they were talking about. Andyou can't infer that the conversation was about narcotics. Mr. Barrett stated if he had conversations with anybody it

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was about numbers.

Now, there is going to be a lot of testimony but a lot of witnesses. You have heard many, many names, and when you come to start listening to the testimony, as far as Mr. Barrety is concerned, and you might do that on the rest, I ask you to do this: mentally mark a little box. Call it Barney Barrett's box. Every time a witness mentions Barney Barrett, testifies properly as to what Barney Barrett has done, and when I say "properly," his Honor admits the testimony and there may be objections to some of the testimony, his Honor may admit it, he may not, but if he admits it you throw it into the box.

When you go out to deliberate, mentally you will have a box containing the accusations against Barney Barrett. I feel sure that when you total them up, follow his Honor's instructions on presumption of innocence, the fact that the government has the burden of proving the defendant guilty beyond a reasonable doubt, you will bring in a verdict on Barney Barrett of not guilty.

I just want to say one thing further. The fact that he is in an indictment with four other gentlemen doesn't mean that when you go out to deliberate you have

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to tie him in with the others. His Honor will tell you that guilt or innocence is indiviudal. You have to reach a verdict on Mr. Barrett separate and apart from anybody else, and again I say, I think that the proper verdict would be not guilty, and I thank you.

THE COURT: Mr. Lavin, you may present your first witness.

MR. LAVIN: Your Honor, the government calls Cecile Mileto.

MR. FREYBERG: Your Honor, may we have a side bar for a moment, please?

THE COURT: No.

MR. FREYBERG: Your Honor, then I would like to object at this time. We were advised that the first witness would be someone other than Miss Mileto. The prosecuting attorney, of course, is aware of the fact that Mr. Mallah --

THE COURT: I think you needn't state anything further. I know your point. I have discussed it with Mr. LaRossa. I think you are mistaken.

MR. FREYBERG: My objection has been noted, your Honor.

THE COURT: The government may call the witnesses in the order that it deems appropriate.

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C E C I L E M I L E T O, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAVIN:

Q Miss Mileto, what was your husband's name?

A Louis Mileto.

Q You were married to Mr. Mileto, were you not?

A Yes, I was.

Q You are presently a widow?

A Yes, I am.

MRS. ROSNER: Objection.

THE COURT: Overruled.

Q You have been arrested and convicted of some crimes, have you not?

A Yes, I have.

Q In 1970 were you convicted of petty larceny?

A Yes, I was.

Q What sentence did you receive on it?

A Probation.

Q Was that reduced from another charge?

A I believe so.

Q Was armed robbery the charge that it was reduced from?

A Yes.

Q In 1927 were you convicted of possessing drugs?

A Yes, I was.

Q Were you sentenced on that?

A Yes.

Q Were you sentenced in Nassau County to 90 days?

A Yes, I was.

Q In 1972 did you plead guilty to another charge of possessing drugs?

A Yes, I did.

Q What sentence did you receive on that if you recall?

A No, I don't recall.

Q Was that a suspended sentence or nonconditional discharge?

A Yes, I believe so.

THE COURT: Mrs. Mileto, try to speak so that the jurors far away from you can hear you.

THE WITNESS: All right.

Q In 1972 you were also arrested on another petty larceny charge, were you not?

A Yes, I was.

Q It was in Nassau County?

A Yes.

Q Was it shoplifting?

A Yes.

Q Were you arrested last week by authorities in another state for forging prescriptions?

A Yes, I was.

MRS. ROSNER: Your Honor, I am going to object to the leading form of the prosecution's questions.

THE COURT: Well, the objection as to this question is overruled.

Q What happened in that charge?

A It's still pending.

Q In May of 1971, can you tell us where you and your husband were living?

A Brooklyn.

Q Did you also live in Queens?

A Yes, I did.

MRS. ROSNER: Your Honor, again may I object to the leading.

THE COURT: That is overruled.

MRS. ROSNER: I am sorry, Judge. I can't hear you.

THE COURT: I said that's overruled.

MRS. ROSNER: I am asserting an objection to this question now, your Honor.

THE COURT: Yes, that's overruled.

BY MR. LAVIN:

Q After you lived in Queens did there come a time when you moved elsewhere?

A. Yes.

MRS. ROSNER: I object to the leading, your Honor.

THE COURT: Overruled.

Q Where was that?

A Bellmore, Long Island.

Q Would you tell us what your husband Louis was doing for a living in 1971, in May?

A He was cutting heroin.

Q How do you come to know that?

A My husband told me.

Q Did he tell you who he was working for?

A Yes.

MRS. ROSNER: Objection, your Honor, hearsay.

THE COURT: This is taken subject to connection.

A Do I answer this question?

Q Yes.

A Who he was working for?

Q Yes.

A Herbert Sperling.

Q Did you ever meet Mr. Sperling?

A Yes, I did.

Q Where did you meet him, if you recall, for the first time?

A 5 Spring Street in July that year.

Q Of 1971?

A Yes.

Q What is 5 Spring Street?

A That was Herbert and Josephine Sperling's apartment at the time.

Q Did you ever see Mr. Sperling after that on other occations?

A Yes, I did.

Q Can you tell us some of those places, please?

A Ballantine's Barbershop; their home, they had built a home in Ballmore; my home. We were quite friendly.

Q Did you also know a person by the name of Joseph Conforti?

A Yes, I do.

Q When did you first meet Mr. Conforti?

A About 10 years ago in California.

Q Did you meet him with your husband Louis?

A Yes, I did.

Q Mrs. Mileto, I show you what's been marked Government's Exhibit 1, which is a picture. Can you identify the persons in that picture, please?

MR. MITCHELL: Objection, your Honor.

A Yes.

THE COURT: Overruled.

A That's Joseph Conforti.

Q Would you describe where they are sitting in relation to as you look at the picture?

A This is Joseph Conforti on the right; Kay, I don't remember her last name; my cousin Charley Ferguson; myself and my husband Louis.

MR. LAVIN: Your Honor, the government would offer this at this time.

MRS. ROSNER: Your Honor, I will object on the grounds of relevance and no connection at this point.

THE COURT: Received subject to connection.

(Government's Exhibit 1 was received in evidence.)

Q Did you meet Mr. Conforti in 1971 at any

time?

A Yes.

Q In New York?

A When my husband came home from prison I meet Joseph.

Q Where did you meet him?

A He had a gas station up on Gunhill Road in the Bronx.

Q Can you tell us approximately when that was that you met him in New York?

A It was in the summer of '71.

Q Did you see him much at that gas station?

A Yes, I did. Every day, as a matter of fact.

Q Can you tell us why you went up to the gas station?

A Well, I was on a methadone program and my husband used to take me every morning to pick up my methadone and from there we would go to Joseph Conforti's gas station and my husband and him had business.

Q Did you ever see what business they were involved in?

A Well, usually I just saw packages taken into the gas station or brought out, put into the trunk of the car.

Q Did you ever see what was in those packages?

A No, I didn't.

Q Incidentally, you were an addict at that time in 1971.

A Yes, I was.

Q Heroin?

A Yes.

Q You testified before that you moved from Queens to Bellmore. Can you tell us when that was?

A The summer of '71.

Q Did you pack your belongings from the apartment in Queens to move?

A Most of them, yes, I did.

Q During the time you were packing did you discover anything in your closet?

A Yes, I did.

Q Could you tell us what that was, please?

A A large plastic bag with a white powder in it.

Q Did you have occasion to test that in any way?

A Yes, I did. I put a hole in the bottom of it and took a little bit of it and tasted it.

Q Can you tell us what you thought it was at that

time?

A I thought it was a cut.

Q Can you tell us what you mean by cut?

A A cut for heroin. I had never tasted pure heroin, and I didn't know that at that time that that's what it was.

Q Did you ever ask your husband what was in that package?

A Yes, I did, at a later time.

Q Did he tell you what was in it?

A Yes.

MRS.ROSNER: Objection, your Honor. Hearsay. May bhe jury be instructed as to the effect of the admission of this type of evidence at this time, your Honor.

THE COURT: Objection is overruled. Taken subject to connection. Go ahead.

Q Can you tell us what he told you?

A Yes. He told me that it was pure heroin.

Q You testified that you observed your husband bring packages but you don't know what was in them up to the gas station. Did you ever go with your husband on other occasions when he brought packages to people or places?

A Yes, I did. Several times.

Q Can you tell us about some of those times?

A I had taken -- I had gone with my husband to the Bronx, to a lounge on one occasion to deliver a package, to a Sal Sanfrantino or -- I am not sure of his last name.

I had gone to Queens Boulevard, a Wetson's at one time, to deliver a package.

Q Can you tell us about tthat time? Can you tell us when, approximately, it was, if you recall?

A What approximately?

Q What time it was, a date if you can recall, as best you can recall.

A Well, it was in the late afternoon, it was a very rainy day. We had to sit and wait. We waited for a car to pull up. My husband made a phone call on the corner of the Wetson's.

MR. MITCHELL: Your Honor, could we have a year?

THE COURT: I beg your pardon?

MR. MITCHELL: Could we have a year at least?

THE COURT: Yes, if it isn't brought out on direct examination you will bring it out on cross, I

am sure..

MR. MITCHELL: I am not going to cross this.

THE COURT: I beg your pardon?

MR. MITCHELL: I am not going to cross examine this witness. I would just like to have it for the record.

BY MR. LAVIN:

Q What year was it?

A Same year, '71.

Q Was it the spring, the summer, the fall?

A The spring, I would say.

Q You are sure it wasn't later on in the year or something?

MRS. ROSNER: Objection, your Honor.

THE COURT: Yes, that objection is sustained.

Q Can you tell us what happened at that time?

A At Wetson's?

Q Yes.

A We were waiting for somebody. I didn't know at the time who it was. My husband went to the corner. He made a phone call. A few minutes later a car pulled up. He went to the trunk of the car, he took out a shirt box, it looked like, wrapped in brown paper,

and he ran to the car that was parked in the Wetson parking lot and handed the package to the driver.

Q You didn't know the person?

A Well, I didn't know him at the time but I met him afterwards.

Q You testified you went to the Bronx on one occasion to deliver a package, I think to a bar?

A Yes, I did.

Q Do you know when that was?

A No, all this was taking place in the summer, just while we were moving. I don't really --

Q L971?

A Of 1971, yes.

Q Can you tell us what happened at that time in the Bronx?

A My hssband went into an Eva's Intimate Lounge on Westchester Avenue, and he just ran across the street, we parked across the street from the bar, and he ran in and he ran back -- he ran back out, took a package from underneath the front seat, and brought it back into the lounge, came back out and we went home.

Q During that time did you have occasion to look in the package?

A Yes, I did. I went underneath the seet,

opened the paper bag. There was a package in a plastic bag of white powder.

Q Do you know an individual named Benjamin Mallah?

A Yes, I do.

Q Do you see Mr. Mallah in the courtroom?

A Yes, I do.

Q Would you point him out for the court and jury, please?

A The gentleman with the eyeglasses on and the yellow shirt here, right at the table.

MR. LAVIN: Your Honor, may the record reflect that the witness has identified Mr. Mallah.

THE COURT: Yes.

Q Do you recall the first time you saw Mr. Mallah?

A No, I really don't. I had only met him on a couple of occasions.

Q Can you tell us about those times, when they were? When was the first time you saw him if you recall?

A I don't remember when I had seen him at the first time.

Q Were you ever up on Spring Street with Mr.

Mallah?

A Yes, I was.

Q Do you recall when that was?

A Just before Christmas of '71.

Q How did you come to go to Spring Street at that time?

A With my husband. We went toJosephine and Herbie's house quite often, every day almost.

Q Can you tell us what happened when you arrived?

A We went into the living room, my husband, Josephine, and myself, and Herbie and Bennie were sitting at the kitchen-table at 5 Spring Street.

Q Where were you sitting?

A I was sitting in the living room on the sofa with Josephine and my husband.

Q How far was that from the kitchen?

A Well, it is a small apartment. It is not -- it is as far as where you are standing, I would say, maybe to the middle of the jurors' box.

MR. LAVIN: Your Honor,may the record reflect that is about five or six feet, seven feet?

MRS. ROSNER: I would disagree, your Honor. It is probably more like 15 feet.

THE COURT: The record will show that it is about the middle of the jury box. Go ahead.

Q Did you observe Mr. Mallah and Mr. Sperling doing anything?

A I observed Mr. Sperling counting a large sum of

money, and then placing it in an attache case.

Q Did anyone mention the sum of money that was there?

A Yer, Herbie mentioned that it was $75,000.

Q Who did he tell that to?

A To Bennie.

MRS.ROSNER: Your Honor, I am going to renew the objection to hearsay on behalf of my client.

May the jury be instructed as to the effect of admissions subject to connection?

THE COURT: This, ladies and gentlemen, is a charge of conspiracy. The government will presumably produce evidence which comes from various sources. No one piece of evidence can tell the whole story. The government is attempting to build by the blocks that it is presenting, the fabric of what it is seeking to establish.

Accordingly, evidence is received from time to time and the phrase is subject to connection meaning that as you listen to the pieces of evidence, you can listen to those pieces of evidence now. Then you will determine whether it all fits together into a pattern or mosaic of conspiracy later.

If it doesn't, then you diregard the evidence later because the connection has not been made.

If it does, the evidence which has been received of course is allowed to stand and enters into your deliverations.

So when a particular piece of evidence is offered, and it is received subject to connection, you will bear in mind that it is being received only contingently subject to connection at some point by evidence during the course of the trial, and that is what the phrase means.

MRS. ROSNER: Your Honor, may counsel have a continuing objection on the hearsay grounds so we don't need to rise continually?

THE COURT: No. You make your objections as they occur; so as to flag the Court's attention to what you specifically advert to.

Q Let me go back a little bit so the jury and the Court can understand. You were in an apartment on Spring Street and you observed two people sitting at the kitchen table in that apartment?

A Yes, I did.

Q Who were those two people?

A Herbert Sperling and Bennie Mallah.

Q Was anybody else sitting at the table?

A No.

Q Can you tell us again what Mr. Sperling was doing?

A He was counting money.

Q Did you hear any conversation between him and Mr. Mallah?

A Mr. Mallah was very soft spoken. I didn't hear any conversation from Mr. Mallah really. Herbie is much louder and more of a show.

Q Did you hear him say anything at that time?

A Yes, he said that this $75,000 isn't too bad a haul, or something to that effect.

Q And what was done with the money after that?

A The money was put into an attache case and Mr. Mallah left with it.

THE COURT: Mr. Mallah left with it, you say?

THE WITNESS: Yes, he did.

Q Did there come a time, to go back a bit, while Mr. Sperling was counting the money, somebody else arrived in the apartment?

A Yes, young Sonny, Peter Salanardi I believe his name is.

Q Did Mr. Salanardi have anything with him?

A Yes, he came up with a paper bag with some more money and thiswas added to the sum of money that Mr. Sperling was counting out.

Q Let me direct your attention to the summer of 1971,

that period of time you were talking about before. Was there ever a time you received a phone call from your husband with some directions?

A I received a phone call one time in the summer and he asked me to bring in a cut into Manhattan. I know what a cut is.

He asked me to go into his attache case in his closet, take those cans and put them in a paper bag and bring them into Seventh Avenue and I think it is 54th or something by Ballantine's Barbershop.

Q Did you do that?

A Yes, I did.

Q Can you tell us what happened briefly when you arrived down there?

A My husband took the bag, told me he's see me later or call.

MRS. ROSNER: Your Honor, objection, hearsay, and not in furtherance of the conspiracy.

THE COURT: This is taken subject to connection. Overruled.

A He took the bag, told me to go home, and he gave me a $20 bill to pay the cab and he'd call me later.

Q You testified you had been down to Ballantine's before?

A Yes.

Q Had you been there a lot?

A Yes, I had.

Q Let me show you what's been marked Government's Exhibit 8 for identification which is a photograph. Can you identify the background of that photograph?

A Yes, this is Ballentine's Barbership, right here on your right.

Q Can you identify any of the persons in those pictures? Just answer yes or no.

A Yes, I can.

Q Can you tell us the persons thatyou see in that picture that you know?

A My husband -- can I --

Q Let me give you a pen and would you please draw an arrow indicating your husband and any other persons you know and put their name there(witness marks photograph).

A No, I don't know any one else. This looks like Sonny but I couldn't swear to it.

Q Would you look in the corner of the picture and see if there is anybody?

A Oh, there is Herbie right here, Herbert Sperling.

Q See if this is a better pen for writing? Would you make an arrow right next to it.

(Marks photograph.)

Q Would you reweite the person you indicated as your husband Louis, the name?

(Witness marks photograph.)

Q Does this picture look like the area in front of Ballantine's in 1971?

A It is the area.

Q Do you see any changes in that, I mean, from what you recall and what this picture represents?

A No.

Q You didn't take this picture , did you?

A No, I didn't.

MR. LAVIN: Your Honor, the government offers Government Exhibit 8 for identification at this time.

MR. MITCHELL: May I see it, please.

Your Honor, I am going to object. There is no proper foundation as to when the picture was taken.

MRS.ROSNER: Objection on the ground it is not connected at this point, your Honor.

THE COURT: Mr. Lavin, I think some further indication is required initially.

MR. LAVIN: Yes,your Honor.

Q Do you know an individual named Mark Reiter?

A Yes, I do.

Q Was your husband arrested in February of 1972?

A Yes, he was.

Q How did you cometo find that out?

A When he came out on bail.

Q What did he tell you about his arrest?

MRS. ROSNER: Objection, hearsay, your Honor, and not in furtherance of the conspiracy.

THE COURT: This is taken subject to connection. Overruled.

A He told me that a cowboy had arrested him. He was laying on the floor of our Thunderbird, and the agent came up and asked him what he was doing; and he said I am just laying here. And he arrested him with -- I don't know, a few kilos of heroin. He was supposed to be making a delivery to Mark Reiter and he was arrested.

Q Shortly after that did you have a conversation with Mr. Sperling or did you overhear a conversation between Mr. Sperling and your husband?

A Yes, I did.

Q Where did that take place?

A In my home in Bellmore. Mr. Sperling came in very angry. He told my husband --

MRS. ROSNER: Same objection, your Honor.

THE COURT: Overruled, subject to connection.

A He started yelling at my husband;"I told you I didn't want you to do business with Mark Reiter --Mark."

He said "I told you how to make deliveries. If you had listened to me things like this wouldn't happen."

He said, "This is coming out of your end. It is coming off the top."

Q What was your husband arrested for in February?

A Heroin.

MR. LAVIN: I have no further questions.

THE COURT: We will take a short recess at this time.

The jury may go out.

(Recess.) (Jury present.)

THE COURT: Mr. Duke, any cross examination?

MR. DUKE: No questions, your Honor.

THE COURT: Mrs. Rosner?

MRS.ROSNER: No questions, your Honor.

THE COURT: Mr. Peluso?

MR. PELUSO: No questions, your Honor.

THE COURT: Mr. Mitchell?

MR.MITCHELL: No questions, your Honor.

THE COURT: Mrs. Mileto, I am going to excuse you temporarily. One of the lawyers is unavailable at the moment. He is in another court finishing another case,

and he will be over here this afternoon. I will ask you to come back so that he can determine whether he wants to ask you any questions; so would you please arrange to stand by.

THE WITNESS: Yes, sir.

(Witness steps down.)

THE COURT: Next witness.

MR. LAVIN: Barry Lipsky, please.

B A R R Y G L E N N L I P S K Y, called as a witness on behalf of the government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAVIN:

Q Mr. Lipsky, how old are you?

A Thirty-three.

Q Will you please tell the Court and jury what your educational background is?

A I graduated high school and graduated graduated high school in Miami Beach, Florida, and I attended the University of Miami. Graduated with a BBA in marketing.

Q Tell us briefly what you did following your attendance at college.

A I worked for the government, Department of Health, Education & Welfare connected with the State of Florida

Department of Public Welfare, Educational Opportunity Program.

Q This is just briefly, Mr. Lipsky.

A Yes.

Q Did you do anything else after that?

A Yes. I worked in the family restaurant as an assistant manager and fice president of the restaurant; and after that I started training in Miami Beach and then New York for a stock brokerage position as a registered representative of a New York Stock Exchange member firm.

Q Were you employed as a stockbroker in Florida?

A I was.

Q During the time you were employed as a stockbroker, were you indicted by a -- did you subsequently plead guilty to interstate transportation of stolen securities?

A I did.

Q During the time before you were indicted were you called before a grand jury in Florida?

A I was.

Q Were you asked certain questions?

A Yes.

Q Did you respond truthfully to those questions?

A I did not.

Q Mr. Lipsky, you have also pled guilty, have you not, to a charge of manslaughter in the first degree on

January 15, 1973?

A That is correct.

Q Have you been sentenced on that charge?

A I have.

Q Can you tell us first what you were originally indicted for?

A Murder.

Q Can you tell us the sentence you received?

A Yes. An indefinite term up to 20 years.

Q You also testified in certain trails in this courthouse, have you not, Mr. Lipsky?

A Yes, I have.

Q Were you asked on at least two or three occasions if the government had made any promises to you for your testimony?

A Yes.

Q What was your response to that?

A I responded that there were no promises made to me.

Q And at the time you said those things, were those answers you gave under oath truthful or not?

A They weren't.

Q They were untruthful?

A That is correct.

Q Do you know an individual named Vincent Pacelli, Jr.?

A I do.

Q Do you see Mr. Pacelli in the courtroom?

A I do.

Q Would you point him out for the Court and the jury, please.

A He is second man to your right with the glasses and dark suit.

MR. LAVIN: May the record indicate the witness has identified Vincent Pacelli, Jr.

Q When did you first meet Mr. Pacelli?

A Some time in 1970. I believe.

Q Do you recall where that was?

A I believe it was in the Hippopotamus Discotheque.

Q In New York City?

A 154 East 54th Street, New York City.

Q Did there come a time when you began working for Mr. Pacelli?

A Yes.

Q What kind of work were you doing for Mr. Pacelli?

A Narcotics work.

Q Do you recall when that was thatyou first began working?

A I believe it was some time after Easter, 1971.

Q Can you tell us how it came about that you began working for Mr. Pacelli?

A Yes. I was living with a friend, Mr. Fabre, and Mr. Pacelli was friendly with Mr. Fabre and Pacelli knew that I had a case in Florida.

MRS. ROSNER: Objection, your Honor.

THE COURT: Strike it out.

Q Tell us if you can what Mr. Pacelli said to you and what you said to him about the narcotics.

A Yes.

Pacelli said to me,"I know you had a case" --

MRS. ROSNER: May I renew the hearsay objection as to my client, your Honor?

THE COURT: This is taken subject to connection.

Q Can you tell us that conversation, please?

A Yes.

Pacelli said to me, "I know you had a case in Florida and you did the right thing, you didn't say anything when you got indicted, and I know some of the people that were on the case down there with you".

Q Could you just relate to us what he said about the business that you were to be involved in?

A Oh, he said, "I know you don't have any money now and you are broke and you are living with Bennie and I want you

to hang loose and stick close and I have something coming up in the near future where I think you can make a nice piece of change."

Q Did you hear from Mr. Pacelli again after that regarding that piece of change that you were to make?

A Yes, I did.

Q Do you recall when that was?

A It was some time within the next few weeks after that first conversation I just told you about.

Q What happened at that time?

A I was at Mr. Fabre's house. Pacelli called up on the phone, said to me --

MRS. ROSNER: Same objection, your Honor.

THE COURT: Taken subject to connection.

A He said to me "I want you to meet me at the club at a specified time tonight."

And I said, "All right."

I hung up, and the club he meant was the Le Directoire Discotheque on 48th Street, and I went there and he arrived shortly thereafter.

Q What happened at that club?

A Pacelli came over and spoke to me. He said -- handed me his keys to an apartment where he and I and his girl friend at the time had been a previous time up on Third

Avenue. He said, "I want you to go up to that apartment on Third Avenue and go in, get in, and wait for me up there."

I said, "All right."

He said, "I'll come up some time later and I'll ring three times on the buzzer. If everything is all right you buzz me back twice."

Q Had you been to that apartment previously?

A I had.

Q Where was that?

A 1420 Third Avenue, between 80 and 81st Street, the first or second floor.

Q Is that New York City?

A That is correct.

Q And did you go up to the apartment that night?

A I did.

Q Could you tell us what happened that night while you were in the apartment?

A I went into the apartment. I got in by buzzing the doorbell and somebody buzzed me through and I used the keys that he gave me and I got into the apartment. I went into the apartment and I fell asleep on the couch.

Some time thereafter that night the bell rang, woke me up, and I buzzed it back twice, and he came in carrying

a large gray suitcase. He opened up the suitcase and there was a large quantity of bags of white powder in there.

I said, "What's that?"

MRS. ROSNER: Same objection, your Honor.

THE COURT: Received subject to connection.

A He said, "That's ten keys of junk, ten keys of heroin in there."

I said, "Oh."

And he told me, "You have to stay here in this apartment and guard these goods because the door is bad, it's made out of wood, and the stuff is, you know, worth a lot of money, you have to watch it, stay here with it," and he left me some money so that I could go down and buy my food at a bar nearby and bring it back up and eat there in the apartment, not leave.

Subsequent to that, in the next 10 to 14 days, I remained there in that apartment and Pacelli came back from time to time, sometimes two -- twice a day, and sometimes he didn't come at all, some days, and sometimes he came two or three times on a day, and he would come in and remove one of the packages of heroin and put it under his shirt in a bag, his coat, and leave. One or two he would take out at a time. He did this until most of it was gone, within ten to fourteen days, and during this period he said,

"Listen, you can move in here if you want to. The rent is very cheap, the rent is low," and he told me the rent is about $63 a month.

I said, "Well, that's not a bad idea."

He said, "You can move out of Bennie's house and move up here and be on your own. You can put in a phone," and he gave me a name I should put the phone in under. The name was Harold Stella.

Q Did you get a phone?

A I had the phone installed under the name of Harold Stella.

Q Did you move all your clothing and everything into the apartment?

A Yes. He said I should -- Pacelli said I should borrow his car one morning from his apartment building, which I did, and packed up all my stuff from Mr. Fabre's house and moved it up to 1420 Third Avenue, and I moved it all in, all my personal belongings, and then I -- he told me to go around the corner, on 81st Street near a Chinese laundry was the entrance of a building where the superintendent lived, and he said I should go in there and tell the superintendent that I was going to move into that apartment and that I should pay the superintendent a couple of months back rent, which was around $200 or so.

Q Did he tell you the name of the superintendent?

A No, he didn't know the name. He told me a little man with glasses, white hair, and he said to me, "Just tell the superintendent that this kid Vinnie said it is okay for you to move in there and pay him the back rent and pay the rent bill."

Then I put the phone in, I put the name Harold Stella on the mail box by the street.

Q Who were the rent bills being sent to?

A What name were they in?

Q Yes.

A The name of Wilfredo Cintron

Q Were you paying the rents in that apartment?

A I paid the rent.

Q Did you pay it to Mr. Stanley?

A Yes, I did.

Q I show you Government Exhibit 2 for identification. Can you tell us what those are, please?

A Yes, those were some of the rent bills from the apartment I lived in.

Q Were those the rent bills you received, the receipts?

A They appear to be.

Q Did you find out that persons's name, the janitor?

A The superintendent?

Q Yes, the superintendent.

A Yes.

Q What was his name?

A James Stanley.

Q Did you pay the rent to him?

A Yes, I did.

Q Those are rent receipts you received?

A Yes.

Q Can you tell us what name they are in?

A Wilfredo Cintron.

Q I show you now Government Exhibit 3 for identification. Can you tell us what those are?

A New York Telephone Company bills, the same apartment I just told you I lived in.

Q Were they the bills sent to you?

A Yes, under the name of Harold Stella.

Q And did you pay those bills?

A Yes. This is my handwriting.

Q What are those things you are referring to? Are those the receipts for your payment?

A This?

Q Yes.

A This is a copy of a counter check thatyou buy in

the bank.

Q That is what you used to pay the telephone bill?

A That's what I used to pay the phone bills, by buying a counter check in the bank.

MR. LAVIN: Your Honor, at this time the government offers Government's Exhibits 2 and 3 for identification.

May I proceed while they look at them?

THE COURT: All right, go ahead.

Q During the time of the course of the ten days that you testified that you were living in the apartment did there come a time when you picked up some equipment?

A That is correct.

Q Where did you get that equipment?

A Up at the apartment where Pacelli and his girl friend Beverly Jalaba lived on 38th, 39th Street in New York City, Apartment 27S.

Q Can you tell us what that equipment was?

A Yes. Picked up two large shopping bags containing plastic bags, a plastic bag sealing machine, spoons, large and small, a strainer, thermometer, a bottle of acid, a spatula, brown paper, and other equipment like that.

Q Did you have occasion to use that equipment after that time?

A Yes.

Q What did you use it for?

A Used it for packaging up narcotics.

Q Did there come a time when you received some instructions from Mr. Pacelli about the door in that apartment, 1420 Third Avenue?

A Yes, I did.

Q What did he tell you to do?

MRS. ROSNER: Same objection.

THE COURT: Received subject to connection.

A During the time 10 to 14 days that I was in that apartment that I just related to you, I was up there, Pacelli came up, said, "Listen, why don't you fix up this door. It's weak."

I said, "What do you want me to do?"

He said, "Put on a sheet of steel on the outside of the door, have a locksmith or somebody -- get a place to do it."

I said, "I don't have any money."

He gave me a hundred dollars to go and get the job done, to change the locks. There was sort of a tumbler lock, a Segal lock, something like that, in the door, and there was sort of a Fox police lock in the bar that went back of the door to a hole in the floor.

I took the money and the following morning I

went up to 86th Street. I walked along 86th Street and found a locksmith, told him what I wanted done, and they came over the same day, I believe, and they put a piece of metal about that thick on the outside of the door with screws and bolts going through to the inside with wound up nuts on the inside to make it secure, so that the entire front of the door into the hall was one piece of metal, and they changed two cylinders on the existing locks in the door and gave me new keys. I had a set made and gave them to Pacelli and I had a set. I paid them for the job.

Q Do you recall how much you paid?

A I think it was $90.

Q How long did you work for Mr. Pacelli in total?

A From the time I started?

Q Yes.

A Oh, it would be around ten to eleven months.

Q During that time were you in charge of the stash, of the narcotics?

A I was.

Q Were the narcotics always kept at 1420 Third Avenue?

A No, they weren't.

Q Where else were they kept?

A Kept in 55 East -- in an apartment at

55 East 9th Street. I believe it was Apartment 5P.

Q Do you know whose apartment that was?

A A girl by the name of Susan Weyl.

Q Do you recall when those narcotics and equipment were moved down there?

A Whatmonth, you mean?

Q Yes.

A I think they were moved down there after October of '71, either late in October or just after that.

Q Did you bring them down there?

A I did.

Q During the time you first began working for Mr. Pacelli did he tell you anything about his business and the people he was involved with?

A He did.

Q Can you tell us as best you recall what he told you at that time?

MRS. ROSNER: Objection, your Honor, narrative hearsay not in furtherance of the conspiracy.

THE COURT: It will be received subject to connection.

A Pacelli told me he had two partners he was just beginning, starting to have an association with in the narcotics business, a man named Abbe Perez, another man named

Al Bracer, and he said "We are going to make a lot of money and you are goingto get in on the ground floor with us as a worker, narcotics worker, and you will make a nice piece of change, because I know you are broke, and you take care of a lot of things for us, and Abbe and Al have some connections to get narcotics, get coke, junk, from overseas, in the city, and I think we will make a lot of money, the three of us together with you and a couple of other people who are workers with us."

Q During that time or shortly thereafter, when you first moved into 1420, were you instructed how to mix and dilute cocaine and heroin?

A I was.

Q Can you tell us when the first occasion was that you were instructed?

A During the 10 to 14 days I was staying in that apartment or just from the beginning that I stayed there, one time Pacelli came up and said, "I have to hit a package."

I said, "What do you mean?"

He said, "I have to dilute it, half a key of junk, I have to" --

Q Let me interrupt you. Junk, can you tell us what you refer to, what you mean by junk, what was meant by the word junk?

A Yes. Heroin.

Q I am sorry. Go ahead.

A He told me "I have to dilute a half a key of junk."

He said, "I want you to watch how I do this."

I said, "Allright."

He said, "Take out the brown paper, clear off your bar," and he took out this one-half kilo bag of heroin and put it in a bag and measured off a certain amount on a scale, which was also part of our equipment, so many grams, and then took out some hit, which is dilutant -- it was either powdered lactose or powdered dextrose, also white powder -- and added a certain amount of the dilutant to another bag and weighed that on the scale, and then took out the large -- the big strainer, about this big, and emptied the heroin and the hit, the dilutant white powder, into the strainer, and then, holding the strainer with heroin and the dilutant in it, with a sppon mixed the entire -- the two pounders together and made them come out of the strainer onto the brown paper, a circular pattern, and then take a spatula, press all of the heroin and dilutant down flat so that you are pressing it all together to get the color all one color, so you couldn't see the difference between the heroin and the dilutant white powder that we put into it, and then rolling

up the brown paper, pressing it down flat, and then repeating this entire process of going to the strainer, the spatula flattening of the powder and the rolling it up in the brown paper, flattening it down, seven times, to ensure its being mixed properly.

He then took the proper amount -- all of the white powder, took it and with a spatula picked it up off the brown paper and placed it into a clean plastic bag, and then sealed that bag on the sealing machine that you plug in, and then did the same thing with another half kilo bag of the heroin, and then further sealed those two bags in other plastic bags, so that each half kilo of heroin was in two -- was sealed in two plastic bags.

And that is the first time I --

Q Where did that take place?

A That was at 1420 Third Avenue.

Q Were you ever instructed how to mix narcotics any place else before that time?

A Yes.

Q Where was that?

A Up at the apartment that Pacelli and his girl friend lived in at 38th Street and Second Avenue.

Q Who was there at that time?

A Pacelli and his girl friend, Beverly Jalaba.

Q Was it much the same procedure as you just described to us?

A Yes, but when I came in he was already mixing the heroin through the screen as I just described to you on the dining room table, a brown piece of paper.

Q Did there also come a time when you were instructed how to analyze cocaine and heroin to determine the purity of the cocaine or the heroin, the quality of it?

A I was.

Q Can you tell us when that was?

A Yes. Well, it was some time in the month -- the first month I was living in that apartment after I moved my clothes in.

Q Can you tell us who instructed you how to do that, test the cocaine?

A Mr. Pacelli did.

Q Can you tell us the test he told you to perform?

A On which narcotic?

Q On heroin?

A Heroin?

Q Yes.

Q I had a shot -- we had a shot glass. You turn the shot glass over and there is a little rounded out portion the bottom of the shotglass.

You take a small portion of heroin from each of the bags you want to test, just a small little pinch, and place it in the bottom of the shot glass, in the rounded out section, and then take this acid -- I am not sure what kind of acid it was or is -- and then take an eye dropper and add just enough acid to the heroin to let it dissolve and then just leave it alone and watch the color.

The acid to start with was almost clear or yellow and would start to get darker, greenish -- bright yellow, then greenish, then dark green, then almost blackish green, very, very dark green, and that was one of the ways you could supposedly test heroin for its purity. It got green, almost black, and there were no specks of white powder left floating around in the little small puddle of acid, heroin, that was in the shot glass bottom.

Q as there another test that you were instructed in by Mr. Pacelli?

A Yes. There were two other ways. Take a vial, a little pill vial or something, wash it out, dry it. It's this big. Put about that much alcohol in it and take a pinch of heroin from each of the bags you want to test and throw it into the vial, put the top on, shake it up, and if -- then set it down. If any residue stayed around the edge of the vial on the inside above the level of the alcohol then the goods, the heroin, was hit and was not pure.

Q What was the third test?

A The third test was somewhat lengthy. You have to read the goods, cook the heroin. We had a Pyrex pot sort of with a handle. You put it on the stove, turn the heat up on the burner on the top of the stove, turn the heat up full, and then take a quart of Squibb mineral oil, pour it into the Pyrex pot.

Had just an ordinary shoebox cover, shoebox top, with a hole in it. Put that over the top of the Pyrex pot to keep the heat in.

Then we had a thermometer that was in this tube. You take the thermometer out and take a glass eyedropper and he put the glass eyedropper into

the flame of the stove for a second to melt the end of the eyedropper so it was no longer an eyedropper, it was a small, little test tube sort of.

Then we take a sample from each of the bags, the half kilo bags, you wanted to test.. Take a little, tiny penknife or something and drop a little white powder into -- a little of the heroin into the eyedropper, which was now closed on the bottom.

Then with those little metal twists like you close garbage bags with we attached the heroin inside of the test tube now to the thermometer, sort of like -- this is the thermometer, here is the test tube, and it is wired together with one of these little twists, and you put the shoebox top on top of the jar, the Pyrex pot, where the oil was heating up, on top of it, put the box top on the top of the pot and lower the thermometer, the thermometer with the silver end, down through the hole into the oil and keep it from touching the bottom of the pot, keep it about that far from the bottom of the pot.

Then take -- we had a pair of pliers. Just put the pair of pliers on top of the shoebox top and clamp them together just to hold the thermometer in place so it shouldn't fall down in the oil any further.

Then I would watch the heroin in the test tube, the color, and Pacelli watched the thermometer, and as the oil got hotter the temperature on the thermometer rose, and he yold me to keep saying how -- what was the color of the heroin, was it white, and when it started to break or -- started to break from white to any other shade as the temperature sent up I was to yell out, tell him exactly when it would change from white to the faintest color of tan or beige, and then at -- depending upon what temperature the goods, the heroin turned brown at or started to turn brown at, that was how you are supposedly able to ascertain how pure the goods are, the heroin is, and most of the heroin we had was -- turned brown somewhere above 190 to 230-something degrees, above 190, 200. If it turned brown anywhere down around 150 or 140 or 160 it was not supposedly pure, it had already been hit by somebody else.

So that's the lengthy way to supposedly be able to tell --

Q I am sorry. If it broke at 238 it was supposed to be pure.

A 237 or anyw here -- 230 or 215 up. If it was around 200 it started to break it still, I guess,

was supposedly pretty good merchandise.

Q What if it broke lower, under 200?

A What I was told, if it broke under, you know, 150, 160, and it was supoosedly pure, it wasn't pure, it had been hit by someone else and the goods weren't pure.

Q These were large chemical thermometers then that were used?

A A thermometer about this long.

Q Were you instructed as to any test for cocaine?

A Yes.

Q Can you tell us what those tests were?

A Yes. One test was just to take cocaine, powder, rub it on the back of your hand, just simply like that. If it dissolved into the hand then it was supposedly pure. If any white powder remained on your hand that was the hit, the additive, and it wasn't pure, it had been hit. That was one way to test it.

Another way was to take a rock of cocaine or some powder, a little bit of the white powder, cocaine, put it into a spoon and put the spoon into a flame of a burner on top of the stove, and it should turn black

and before it turns altogether black there should be a little burst of flame, it will flame up, and then the whole thing will turn black.

Then the only other way I knew to test it, if it had any freezing or numbing qualities. Take some with your finger and rub it on your gums. It's supposed to make your gums numb and make your tongue numb, in a few minutes, not right away.

Q Was that your function during the entire time you were associated with Mr. Pacelli, to stash the drugs in 1420 Third Avenue?

MRS. ROSNER: Objection to the form of the question, your Honor.

THE COURT: I will overrule it. Go ahead.

A You mean did I have other functions?

Q Yes.

A Yes, I did.

Q Can you tell us what those functions were?

A Yes. I stayed there with the narcotics, as I told you. I started to -- after a while I started to make deliveries of these two types of narcotics in packages, kilos, half kilos, multikilo loads, around Manhattan and the Bronx, in different cars and to different various people and places, I changed bad money into

good money for Pacelli and his partners. I did other things.

THE COURT: What is bad money?

THE WITNESS: Bad money to me was -- I was told that bad money was money that was paid by people we sold narcotics to. For example, if they owed us, the partners, $10,000 or $20,000 and they paid it all in a shopping back all in 5s or 10s or 20s, it would be quite a load of money, bulky, and I had the function of taking that money around New York to various banks and changing it in increments of a thousand or $2000 at a time and into $50 bills and $100 bills and then giving it back to Pacelli in the larger denominations.

Q Was it a normal practice during your deliveries to personally hand-package the narcotics to Mr. Pacelli's customers or was this another matter?

A You mean did I hand-package?

Q Yes. How did it usually take place that narcotics were transferred from one person to another?

A I would receive my instructions from Pacelli to go and mix up a half a ki of coke, a half a ki of junk, or more, whatever the order called for, and he would tell me how much hit, additive, he wanted me to put into whatever narcotics it was. I would go to

my apartment in the car that he told me to take or his car or I would take keys that he would give me or someone else would give me, the person we were selling the narcotics to, and take the car that they told me to take and go to my apartment or the place -- Susan Weyl's apartment at 9th Street and package up the narcotics myself. Sometimes at the beginning I did so with Pacelli's assistance or vice versa, I assisted him.

Then I would go out and put it -- put the package of narcotics in the trunk of the car, if we had a trunk key, or under the seat of the car I was operating. I would take the car and drive it to the designated location, park it somewhere, and then bring the keys back or give the keys either back to Pacelli or his partner or the person I was to see.

Q Did you ever have any transactions with a man named Herbert Sperling?

A Yes, I did.

Q Do you recall the first time that you saw Mr. Sperling?

A Yes.

Q Can you tell us where that was?

A In the area in front of Ballantine's Barbershop, around 54th, 55th Street on Seventh Avenue, the

west side of Seventh Avenue.

Q Do you recall when that was, the first time you saw Mr. Sperling?

A Yes. It was in 1971, around May or June, I believe, May or June.

Q Who were you with when you went down to the barbershop that time?

A Mr. Pacelli.

Q Did you ever have occasion subsequent to that time to go down to Spring Street with Mr. Pacelli?

A I did.

Q Would you tell us approximately when that occurred, if you recall?

A Yes. I went down there with Pacelli shortly after the first few times I went to the barbershop area with him. That would also be around the same months. I amnot sure of the months exactly. It was May, more likely June, May or June, I believe.

Q Of what year?

A '71.

Q Tell us about the time you went down to Spring Street.

A For the first time?

Q Yes.

A As I recall, I went down there with Pacelli and he said, "Sit in the car," and he parked on Spring Street near the Bowery, a half a block off the Bowery. He went into a door which was green, had two lights on each side of it. It was in the early evening of a certain day.

Q Do you recall the number of the house?

A I think it was No. 5 Spring Street.

And he said, "Wait for me," and he went into this door. A short time later he emerged, got back in the car. He said, Herby wasn't there."

MRS. ROSNER: Objection, your Honor.

THE COURT: Overruled. It is taken subject to connection.

A He said, "Herby wasn't there, but somebody was there and I left a message for him. Let's go eat."

He said, "I told whoever was up there that we'll be at the Limehouse eating." And he got in the car and we went to the Limehouse, a restaurant. I think it's on Bayard and Mott Street in the Chinatown area.

I went in there with Pacelli and we were eating, drinking some beer and eating some seafood. A man came in and I recognized the man. I had seen

him previously in the area of the barbershop. The man came over to the table and Vinnie kicked the chair out and said, "Sit down."

Q Vinnie, you mean Mr. Pacelli?

A Right. He said, "Louis, this is Barry. Barry, this is Louis." And we shook hands and Louis sat down.

Pacelli then said --

MRS. ROSNER: Objection, your Honor.

THE COURT: It's taken subject to connection.

A Louis said, "I was just up by Herby's and I got a message that you were down here, that you were over here and you wanted to see Herby. What can I do for you?"

Pacelli said, "I wanted to see Herby, see if he had any goods for us, any merchandise, any goods for us."

So Louis said, "Well, he's out eating with his family."

"So Pacelli said, "Look, don't bother if he's out eating with his family. What's going on? Do you have anything?"

Louis said, "No, we don't have anything right

now, but check back with us in a day or so, you know, over there, the barbershop, check back with us, and I think I'll have something for you tomorrow or the next day."

Pacelli said, "Sit down. You want to have a beer with us, something to eat?"

He said, "No, no, I have to go."

Louis had some blood on his hand or something. Pacelli said, "What happened to your hand?"

He said, "A cab driver run into me. I got out and had a fight with him."

Pacelli said, "What are you, still acting like a kid?"

Louis laughed.

Pacelli asked him again, "You want something to eat, you want a beer?"

He said, "No, I'm in a hurry, I got to go, I got to go."

So Pacelli said, "Okay, I'll see you," and Louis left the restaurant.

Q Can you tell us the first time there was a narcotics transaction between Pacelli, Mr. Sperling and Mr. Mileto?

A Shortly after that incident, that meeting at

the Limehouse Restaurant, within the next few days, I believe, four, five days.

You want me to tell you about it?

Q Yes, please.

A I was riding in a car with Pacelli and parked on Seventh Avenue across the street from the barbershop, on the east side of Seventh Avenue. He said, "Come on, get out of the car with me."

I got out and we walked across the street. He said, "You stand over there by that other store two doors down from the barbershop, you stand over there by that door, pretend you are not with us, and I'll talk to these guys and I'll get back to you."

Pacelli went over to another group, a group of men, three men, I believe, and he spoke --

Q Did you know then who those men were?

A I knew who two of them were at that time. There was Mr. Sperling and Louis Mileto and another man .

Q Did you later find out that person's name?

A Yes.

Q What was that?

A Ben Mallah.

Q Do you see Mr. Mallah in the courtroom?

A I do.

Q Would you point him out for the court and the jury, please?

A The man in the yellow shirt with the moustache and glasses and the bald head, the dark suit, sitting next to Mr. Peluso.

MR. LAVIN: May the record reflect that the witness has identified Mr. Mallah.

THE COURT: Yes.

Q Was Mr. Mallah, to your recollection, wearing a moustache at that time?

A No. I didn't remember any moustache.

Q Can you tell us what happened then?

A I stood aside, as I was instructed. Pacelli had a conversation with these three men. They appeared to be talking.

Then Pacelli came over to me and said --

MRS. ROSNER: Objection, your Honor.

A -- "Listen, I want you to give Louis a half a ki of coke." I think, I believe it was a half a ki of coke.

I said, "All right."

He said, "Hit it the way I told you, hit it in this manner, in other words, just put so many

grams of hit into it, and bag it up, go ahead and bag it up, and Louis will come over now and tell you where the car is andyou make up a place to meet with him, and meet me up at my aunt's later."

I said, "All right."

He said, "In a couple ofhours you will meet me up at my aunt's."

I said, "Okay."

He walked away from me and this Louis walked over to me.

Q Did you know Louis' last name at that time?

A I never knew his last name at that time.

Q Did you know his name after that?

A I know his name now.

Q What is his name?

A Louis Mileto.

Q I am sorry. Go ahead and tell us what happened.

A Louis came over to me and he handed me some car keys and what was a piece of paper, a registration for a car, and he said, "There's an old,beat-up, black Ford parked" --

MRS. ROSNER: Same objection, your Honor.

THE COURT: Taken subject to connection.

A Louis said, "There's an old, beat-up, black Ford down on Spring Street facing the Bowery. Go get that car. Here is the keys." As I said, he gave me the keys and the registration.

I said, "I'll make a place to meet you."

He said, "Yeah."

We made up a place to meet at a specified time.

I jumped out into Seventh Avenue and got a cab and I went down into the area of Spring Street, located the black Ford, drove the black Ford up to the area of my apartment, 80th Street and Third Avenue, went up, packaged up a half a ki of coke, as I was told to do. I put the coke in a double plastic bag and in a brown bag and put it inside my shirt and took it downstairs and put it in the trunk of the Ford.

I drove the Ford downtown, parked it on First Avenue near 55th Street. I locked the car, the trunk, and I walked up to 57th Street and First Avenue. There was an Optimo cigar store there at that time. I stood around there a few minutes and Louis came walking up and he said, "How are you?"

MRS. ROSNER: Same ogjection, your Honor.

A I gave Louis the keys and the registration. He said, "Where's the car?" and I told him.

He said, "Where's the coke?"

I said, "In the trunk,on the left."

He said, "Okay, I'll see you."

He walked toward the car and I walked away and I got a cab and went up to Pacelli's aunt's house, where he was waiting for me.

THE COURT: We will take a recess now for lunch and we will resume at 2 o'clock. The jury may go out.

(Luncheon recess.)

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AFTERNOON SESSION

(In open court; jury not present.)

MR. LAVIN: The government has turned over to all defense counsel copies of Cecile Mileto's arrest record, a letter dated August 24, 1973, to Mr. Daniel Ebbin in Nassau County, the Probation Office there, by Mr. John Fallon, acting regional administrator of the Drug Enforcement Administration; a psychiatric report on Cecile Mileto dated December 5, 1973, and the minutes of a sentence before Judge Vitale on September 12, 1973 in Nassau County.

The government has also turned over to defense counsel a letter dated August 17, 1972, to William Cahn, District Attorney, Nassau County, and the letter was sent by Walter M. Phillips, Assistant United States Attorney. And the government has also turned over a psychiatric report by two psychiatrists of the defendant Lipsky. The report is dated -- the covering letter was dated December 28, 1972.

Also turned over was the copy of the judgment of conviction of Barry Lipsky in Nassau County and the minutes of sentence before Judge Spitzer on July 12, 1973.

(Jury present.)

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B A R R Y L I P S K Y resumes.

DIRECT EXAMINATION CONTINUED

BY MR. LAVIN:

Q Mr. Lipsky before luncheon recess you were telling us about the transaction involving you, Louis Mileto and Vincent Pacelli.

A Yes.

Q You testified that you picked it up at 1420 Third Avenue, the package?

A Yes, sir, the half ki of coke?

Q Yes.

A Yes.

Q What did you do with it after that, sir?

A I put it in a double plastic bag, sealed it, put it in a brown paper bag inside my coat, went down to the car, a Ford, put it in the left side of the trunk, locked the trunk, got in the car, and drove the car downtown to First Avenue, parked around 55th Street and First Avenue, locked the car, walked up to an Optimo cigar store on 57th Street and First Avenue, stood there a couple of minutes, and Louis walked up.

I handed Louis the registration of the car and the car keys, and he said, "Where's the car?" I told him and he said, "Where is the coke in the car?"

I told him also.

He said, "Okay," and "See you," and he walked away, and that was -- he walked away.

Q Prior to that incident that you describe had you been to the barbershop on another occasion earlier?

A Yes.

Q Can you tell us the time you were down there who you saw in the vicinity of the barbershop?

A Yes, I was down to the barbershop area more than one time before the time I just told you about and I sat in the car and Pacelli would get out of the car on more than one occasion and go over and talk to a group of men, and one time he came back and got in the car and said --

MRS. ROSNER: Objection, your Honor.

THE COURT: This may be received subject to connection.

A And he said -- I said -- Pacelli said, "They don't have anything for us today. Better check with them in a day or so, maybe tomorrow."

So I said, "That guy over there with the yellow sunglasses on, the tall guy with the bald head in the middle?" He said, "that's Benny Mallah. That's Herby's young partner."

MRS. ROSNER: I would object and move to strike on the further ground that statement is narrative hearsay and is not in furtherance of the conspiracy.

THE COURT: Whether it is in furtherance of the conspiracy will be determined by the jury. The last part of the statement is stricken, however.

MRS. ROSNER: Thank you, your Honor.

MR. LAVIN: Your Honor, may the government make a short offer of proof on that?

THE COURT: You just go right ahead with your questions so as to elicit the information you think is pertinent. I think the objection went more to the form rather than to the substance of what was stated.

BY MR. LAVIN:

Q Did you ask Mr. Pacelli to identify the people who were in front of the barbershop?

A Yes, yes, I did.

Q Can you tell us what he said to that?

MRS. ROSNER: Objection, your Honor.

THE COURT: Overruled.

A Yes, he said, "Louis, that's Louis. Louis works for Herby."

And I said, "Who is that -- who's that other guy, with the bald head and the suntan and the yellow sun-

glasses?"

He said, "That's Benny Mallah, Herby's ~~young~~ JUNK partner."

MR. FREYBERG: Objection, your Honor.

MRS. ROSNER: Your Honor, I renew the objection on the ground previously stated on the ground that it is a narrative statement of hearsay and is not in furtherance of the conspiracy.

THE COURT: That objection is not acceptable. The testimony will be received subject to connection as to all defendants other than defendant Pacelli as to whom it is received directly.

MRS. ROSNER: May I for the sake of the record, your Honor, also note an objection based on United States against Puco on confrontation grounds.

THE COURT: All right, Mr. Lavin, go ahead.

BY MR. LAVIN:

Q Mr. Lipsky, did there come a time when you and Mr. Pacelli engaged in narcotic transactions with a man known to you as Juan Negron?

A Yes, John Negron.

Q Do you know if Mr. Negron has another name?

A Yes.

Q What is that?

A I think his name is Juan Jose Serrano.

Q Tell us the first time you met Mr. Serrano or Mr. Negron?

A The first time I met him?

Q Yes.

A Yes, in the Hippopotamus.

Q Do you know when that was?

A The discotheque.

Q Do you know when that was?

A 1971, about the month of the -- I don't know, June or July I think, or -- I think it was around June or July.

Q Where was that?

A The Hippopotamus?

Q Yes.

A 154 East 54th Street, New York City.

Q Who was in the club that time?

A I was there, Pacelli was there, Benny Fabre was there, some girls were there, I think Margie Jacklone was there, and this fellow John Negron Serrano came in.

Q Were you present during a conversation between Mr. Negron and Mr. Pacelli?

A I was sitting there. I was sitting there while they were talking, the three of them were talking.

Q Can you tell us what was said?

MRS. ROSNER: Objection, your Honor.

THE COURT: Overruled. Taken subject to connection.

A I didn't hear what they said. Pacelli told me later what he and John Negron spoke about. I was introduced to him that night, shook hands with him, he said, "This is Barry, this is John."

"How are you?" and we sat down. And he rode me home on his motorcycle from the Hippopotamus that night.

Q Did there come a time when you had a narcotics transaction with Mr. Negron and Mr. Pacelli?

A That's correct.

Q Can you tell us the first time that you can recall?

A Not too much longer after that meeting at Hippopotamus that night.

Q And you saidyou met them in the summer of 1971?

A I believe it was June or July when I met this John Negron for the first time.

Q Can you tell us what happened on that transaction?

A With John Negron?

Q Yes.

A Yes. Pacelli said to me, "We are going to go to the Bronx to see John, Johnny Negro, John Negron" -- they called him Johnny Negro -- "to see if we can get some coke from him."

Pacelli said they had, the two of them had a conversation in the Hippopotamus the night that I was introduced to Negron where John Negron told Pacelli to come around --

MRS. ROSNER: Objection, your Honor.

THE COURT: Same ruling. Go ahead.

A -- told Pacelli to come around and see him about getting some coke from Negron, buying some coke from him. So we drove up into the Bronx and went up to Shakespeare Avenue,and we did this one day, and parked -- Pacelli parked on the hill on Shakespeare Avenue and went into a house. I waited in the car.

Pacelli came back and he said, "Nothing's happening. He doesn't have anything for us. We'll have to come back in a day or so," and I think we made one or two trips up to this Shakespeare Avenue address to see John Negron for purposes of buying cocaine from him, and finally, a day or -- on the second or third trip

up there Pacelli parked and I remained in the car.

Pacelli walked back down the hill and went into this door, I think it was a red door in a sort of a house on the left side of Shakespeare Avenue going up the hill.

A short time later John Negron came out of thehouse and got into a car and drove up the hill past where I was parked in my car.

A short time later I saw him -- you know he pulled up -- backed down the bottom of the hill, and parked and went back into his house.

A short time after that Pacelli came out, got back into the car with me and took out a large bag from under his coat.

He handed it to me and said, "Keep it down on the floor. Check this coke out, open this bag and look at this coke."

And I did so. And it was -- I am not sure if it was one ki of coke or two kis of coke, but it was a beige or yellowish in color and it was all in the form of slate-type, thin slate-type rocks.

And Pacelli said to me, "This is going to be good coke. We might even be able to make one ki into two kis here. It's very strong." And he said, "We'll

take it up toyour apartment and check it out. We'll look at it."

He drove the car and we drove down to Manhattan and he left me off on Lexington Avenue, a block from my apartment.

He said, "Go upstairs and spread this out on some paper. I will park the car and I will be up in a minute."

A few minutes later he rang the bell. I let him up, five, ten minutes later. He came up and we looked at the cocaine, which was yellowish, and he had me rub some on my gums and break some of the rocks and -- the slate-type rocks, break it up into powder and sniff a little bit of it, and I said, "It feels very, very strong, like it's very strong."

And he said, "Okay, we'll seewhat we can do with this later. It's a little off -- it's not white. It's tannish, it's beigish in color," and he said, "I think it will be very good for us," and I put it away and we both left the apartment. We wrapped it up in silver paper to keep it from getting in the light, put it in a flight bag, put it behind the bar and we left the apartment.

Q I direct your attention now to October of 1971.

During that time did you have a transaction with a person known to you as Nicholas Lugo and Peter Aponte?

THE COURT: Peter who?

MR. LAVIN: Aponte.

A I had a transaction with Nicholas Lugo.

Q Would you tell us about that, please?

A Yes. I was in Yellowfingers Restaurant one afternoon with Pacelli, at 60th Street and Third Avenue, we were eating lunch, and Pacelli said that Nicky was coming over, "I want you to give him half a ki of coke." He instructed me how he wanted me to mix it up and dilute it. I said, "All right."

And just then, we were eating and I could see through the glass windows of the restaurant, a man I know as Nicky Lugo came walking up the street. Pacelli said, "You sit here and wait for me," and he got up and walked outside the Yellowfingers Restaurant and had a conversation within 10 feet of me through the glass window with Nicky Lugo.

I saw Nicky pass something to Pacelli, and Nicky walked away down toward Third Avenue.

Pacelli then came back inside and passed something to me under the table. I took it. It was a registration ticket for a car and a set of car

keys.

He said, "There is a car," he described the car to me, "parked over there between Bloomingdale's and Alexander's on 60th Street." I think he said it was in a loading zone. "Go get that car and go up to your stash, go up to your apartment and mix up half a ki of coke and put it in the car and take the car up to East 106th Street between First and Second Avenue and park it. Walk around. You will find Nicky. Give him the keys and then come back and meet me over here at Yellowfingers."

I went out, I walked out and I got the car, found the -- located the car, drove up to my apartment, parked, went upstairs, mixed up the cocaine, packaged it up and put it in a brown bag, took it down from my apartment and put it in the trunk of this car that I had driven up there.

I drove up to East 106th Street and parked on the curb between First and Second Avenues, I think on the south side of the street.

I walked up and down about five minutes. I didn't see anybody. Then Nicky Lugo came out of a luncheonette, some little restaurant, came, waved to me, he walked across the street to me.

And we were talking a few minutes about something, and then he said to me --

MRS. ROSNER: Objection, your Honor.

THE COURT: It will be received subject to connection.

A I passed the -- I gave Nicky the registration and the car keys. He said, "Where is the car?"

I said, "There it is across the street."

He said, "Where is the coke?"

I said, "In the trunk, on the left side in a brown bag."

He said, "Okay, I better go."

I said, "Okay, I will see you."

I stepped out in Second Avenue, got a cab, took it back down to 60th Street and got out, went back to Yellowfingers. Pacelli was there. He said, "How did it go? Everything all right?"

I said, "Yes, fine, I saw Nicky and gave him the ki and it's all done just as you said."

Q Did you have a conversation after that time with Mr. Pacelli about this transaction?

A Yes, I did.

Q Willyou tell us what was said toyou by Mr. Pacelli?

MRS. ROSNER: Same objection, your Honor.

THE COURT: Same ruling.

A I was walking -- I was with Pacelli in the car, his car we were driving around one evening subsequent to this transaction I just told you, making the rounds of his customers; and he said to me, "Nicky and Abbe are doing business or selling drugs out of the back room of that sporting goods store up at 118th Street. They are doing business with some people right out of that sporting goods store, and they are stupid for doing that and I told them about it."

Q What was the name of this sporting goods store?

A It was L&A Sporting Goods Store on Third Avenue between East 117th and 118th Street.

Q Who was Abbe?

A Albert Perez.

Q Could you tell us the rest of what was said?

A And Pacelli said to me in the car, that -- he said "They are doing business there getting ready to do a

deal with a guy, to sell a guy some coke and I don't like the looks of this guy, and I don't want them to do the deal. They are stupid for doing it and I want them to hold off on doing this deal till I can check this guy out, this customer of their's, because I think he is an agent. I don't like his looks."

Q Subsequent to that conversation was there a time when you were in the Auto Pub Restaurant?

A Yes.

Q Can you tell us who was there at that time?

A Who was there?

Q Yes.

A I came in and Pacelli was there, his wife Beverly was there, Eddie Ramirez was there, Cheryl Lugo, Nicky Lugo's wife was there and Barbara Jalaba, Beverly Pacelli's sister was there.

Q Did Mr. Pacelli say anything to you at that time?

A Yes.

MRS. ROSNER: Sam objection, if your Honor pleases.

THE COURT: Same ruling.

A Yes, I came in and sat down and everybody was in a highly excited state. Pacelli leaned over to me from his chair and he said, "Listen, Cheryl Lugo just got a call

from her mother here. They paged her here in the restaurant and said that Nicky and Abbe just got arrested for something, just were arrested, and I have got to go with Cheryl in her car to find out what happened. I have got to go downtown and see if I can get them out if they have got them in jail. You take my car and take my wife and my wife's sister and go back to my house and wait for me there."

And I had driven a car there with some heroin in it, parked it in a nearby garage, and Pacelli told Eddie Ramirez and he said "Take that car and go about your business and deliver it in the Bronx," and the six of us, I believe there were six of us, left in three different cars and went our separate ways.

Q Did Pacelli say what he was going to do?

A Yes, he was going with Cheryl Lugo, Nicky Lugo's wife downtown to get the bail bondsman or the lawyer or somebody to get Nicky and Abbe out of jail if they were in jail.

Q Do you know an individual named Alfred Catino?

A Yes, I do.

Q Do you see Mr. Catino in the courtroom?

A Yes, I do.

Q Would you point him out to the court and jury?

A He is sitting between Mr. Pacelli and Mrs. Rosner in the brown suit with a green shirt.

Q Do you know an individual named Alfred De Franco?

A Yes, I do.

Q Do you see Mr. De Franco in the courtroom?

A Yes, I do.

Q Would you point him out for the Court and jury, please?

A Yes, he has a white coat on and bald head, with a mustache, I think, sitting behind Mr. Mallah.

MR. LAVIN: Your Honor, may the record reflect the witness has identified Mr. De Franco and Mr. Catino?

THE COURT: Yes.

Q When is the first time you met Mr. Catino?

A You mean the first --

Q When is the first time you have seen them?

A In the Hippopotamus Discotheque.

Q Do you recall when that was?

A I think it was either May or June of 1971.

Q Who else was in the Hippopotamus at that time?

A I was there, Pacelli was there, some other people were there; and this Mr. Catino was there with another -- with another man named Fuzzy.

Q Do you know Fuzzy's name?

A Yes.

Q What was it?

A John Fazzalari.

Q Did you have a conversation at that time with anyone in his presence?

A Yes, there was someone else there, another man, just another friend of mine.

Q Did you speak to Mr. Catino at that time?

A Did I? No.

Q Did you speak to Mr. Fazzalari?

A Not at that time.

Q Did you ever see them again after that, Mr. Catino and Mr. Fazzalari?

A Yes.

Q Can you tell us the next time after that time in the Hippopotamus?

A Yes. Shortly after that within one or two weeks after that, I was with Pacelli and Abbe Perez and we needed some hit, we were out of dilutant for mixing up narcotics; so Pacelli said he was going up to 115th Street to see --

MRS. ROSNER: Same objection, if your Honor please.

THE COURT: Same ruling.

A He was going up to 115th Street to see Fuzzy

and Herbie about getting some hit from him and the three of us, Pacelli, Perez and myself drove up to 115th Street and they got out of the car and told me to stay in the car and they walked east. I was west -- I was in the car just west of First Avenue, and they went toward the east and went into some building. I was a couple of blocks or so away from where I was sitting in the car. And as I sat in the car for a while and then I looked out and I saw Pacelli and Perez walking down the street with two other men. One was Catino and the other one was this man Fuzzy and they went by the corner, by a hot dog wagon, umbrella wagon, vendor, and I got out of the car and walked over.

I got a hot dog and they were eating the hot dogs and drinking sodas, and there was a conversation going on but no one was talking to me and I wasn't talking to anybody.

And so then the other two men,Catino and Fuzzy, walked away after five or ten minutes or so, walked a-way, they said goodby to Pacelli and Perez, and they walked away and I walked with Pacelli and Perez back to our car.

So I said to Pacelli, "Did you get that hit," and he said "Yes."

MRS. ROSNER: Objection, your Honor.

THE COURT: Same ruling.

A And he got in the car and he took out a small, very -- just a small package of brown wrapped -- brown paper or something. He told me it was manitta, which is --

MRS. ROSNER: Same objection, your Honor. I move to strike.

THE COURT: Motion denied. Same ruling. This is taken subject to connection.

A He said it was manitta, and that he said this will hold us for a little bit. It is not much but it will hold us orf a little bit, and we will have to get some more in the near future and we got into the car and we drove away, and Pacelli dropped Abbe off somewhere and then dropped -- we stopped by my apartment and I went up and threw the manitta in with the rest of the goods in the apartment and came back down and that took care of that move.

Q Did you ever go to a club with Mr. Pacelli on 115th Street?

A Yes, I did.

Q Do you recall the first time you were there with Mr. Pacelli?

A I was -- yes, I was -- I parked -- I stayed in the car when Pacelli parked there, quite a few times out in front of that club and I didn't go in. Then one time Pacelli said "Come on in here with me" and we parked

the car and both went in.

Q Do youknow when that was? Can you fix the date and time?

A Not too much longer after this transaction I just told you about. It would be about the same time, June or July, I believe, '71.

Q I am sorry. Go ahead. Tell us about the time you went -- first time you went inside the club.

A I went inside the club and there were some men there, and this Fuzzy was there and Mr. Catino was there, and Pacelli -- they wanted to see -- Pacelli wanted to see them, see if he could sell them anything.

MRS. ROSNER: Objection, your Honor, move to strike.

THE COURT: Motion denied. I will receive it subject to connection.

A He said "We are going to see these guys, see if I can sell them some coke or some junk."

We went inside and they had a conversation. I was standing right by them, the three of them, and then Pacelli said "This is Barry, he is with me and this is Fuzzy and this is Herbie," and we shook hands and "How are you". And then nothing transpired that occasion.

We stayed there for a while and then we left.

mbbr 9 Lipsky-direct

Q Tell us the first time that you had, if you had, a narcotics transaction involving Mr. Catino.

A Yes. Shortly after this conversation I just told you about, I went to that club.

Q Can you again put a time on it, if you can, as best you can?

A June, same as -- just about the same time as I just told you about this conversation, in June or July I believe of '71, I believe.

Q Go ahead.

A I went to the club with Pacelli, at 115th Street. We parked our car, we went in. It was in the evening, and Pacelli told me on the way there he said, "I think I can sell" --

MRS. ROSNER: Objection, your Honor.

THE COURT: Objection is overruled. Same grounds.

A He told me on the way there he said, "I think these guys want to buy some junk from me, and if so, I will go up there with you to your stash and I will help you mix it up because I want to make sure you do it right;" I said all right. We went into the club and Pacelli had a conversation with Fuzzy and Mr. Catino, and I -- he said, come on, we are going to go and mix up some junk for these guys, and Catino.

Q Were you present during the conversation?

A I was just standing adjacent to where they were, just off. I didn't hear the whole conversation. Then he said to me come on, we are going to -- Pacelli said, come on, we are going to go.

MRS. ROSNER: Objection, if your Honor pleases.

THE COURT: Same ruling.

A "We are going to go and mix up some junk for these guys. And we will take their car."

I said, "All right."

Catino passed something to Pacelli, and Pacelli and I went outside and got into a red and black -- a red Chevrolet with a black top, a two-door hardtop, a model a few years old. It was parked on 115th Street when we got it.

He drove downtown, down to Manhattan, and we got near my apartment. He let me off about a block away.

Q What apartment are we talking about?

A 1420 Third Avenue.

Q Go ahead.

A He said "Go up there and get out all the equipment. Get out everything. We need a big piece of paper and get out everything we got to mix up three or four keys of

junk."

So I said "All right."

He said "I will park the car and I will ring the bell with the signal and you will let me in."

I said "All right."

We parked the car. He came up a few minutes later. I let him in. I had all the equipment out and we packaged up three or -- and hit with additive three or four kilos of junk, packaged them up in half kilo bags, double bagged them and wrapped about -- I don't recall if there were three or four keys of junk; but we packaged them all up in half kilo bags, double bagged them and sealed them and put them all into a big brown bag; placed the whole big brown bag into a shopping bag; and Pacelli said to me, this was pretty late at night now, he said I am going to go get the car, it's around a couple of blocks away and wait five minutes and then you come out carrying the bag and I will be on Lexington Avenue by the church over there by 80th Street, just south of 80th Street. You walk up there and if everything is all right I will give you a nod and I will jump out and we will throw it in the trunk and we will go.

So I came -- I let him -- he went out and came out five minutes later, locked the door and walked down the street with this big shopping bag with all this junk, and

walked up the street to Lexington Avenue, stood there on the corner, and Pacelli came by driving the red Chevy and looked at me and there was a man standing across the street, just staring at me, and Pacelli gave me a nod of the head and kept on going, went around the block and he came back up another time and the man was still there but Pacelli stopped the car; and jumped out, opened the trunk, and motioned for me to throw the bag in the trunk, so I put the shipping bag in the trunk and speedily closed the trunk and he got back behind the wheel and I got in the right-hand side and he drove the car up to First Avenue between 113th and 114th Street or 112th Street and parked the car on First Avenue heading north. We locked the car and we walked back to the club, to that 115th Street club.

We went in there and Pacelli walked up and had a conversation with Catino, and Fuzzy, and handed the car keys to Catino, and the registration, I believe.

Q Did you hear the conversation?

A I didn't hear the conversation. I was standing off from them.

Q Did you see Mr. Pacelli hand the keys and the registration--

A Yes, I saw him hand something to Catino.

Q Did you know what it was?

A Yes. It was the car keys and the registration ticket. And then-- I don't recall if we left the club just then. I believe we left the club then. That was all our activities for that night.

Q Was there another transaction involving that same red Chevrolet subsequent to that first time?

A Yes, there was.

Q Can you tell us what that was?

A Oh, to the best of my recollection, it was after that, it was after that. I am not sure if it was July -- June, July or August or September. I can't recall the exact date of this next transaction. I think it was some time in the summer, in the months I just mentioned, but I can't be absolutely sure.

Q Will you tell us about that transaction?

A Yes. I went with Pacelli to the club. We went in and he-- Catino and Fuzzy were there and he walked over

to them and I was with them and Catino gave him the keys to a car, handed Pacelli the keys to a car and a registration ticket, and on the way there Pacelli said to me--

MRS. RONSER: Objection, your Honor.

THE COURT: Same ruling.

A He said, "Mix up two keys of junk for Skinny - I mean, for Herbie and Fuzzy and I will be here, you go mix it up in your apartment and bring them, bring the car back and park it nearby, and you know the car, it is the same red Chevy that we used before."

So Pacelli gave me the keys and registration ticket and I went out and got in the red Chevy-- I found it parked on 115th Street down toward First Avenue -- and drove down toward my apartment, parked the car, went upstairs and packaged up -- hit and backed up two keys of junk, put them in a brown bag and took the four and a half kilo bags down, put them in the trunk of the red Chevy, drove the Chevy up First Avenue and parked it between 113th Street and 114th Street on the right-hand side, locked the car and walked back into the club.

I handed the keys and the registration to Pacelli, told him where the car was and where the two keys of junk were in the car.

He went over in a corner, had a discussion with

Catino, and then-- I don't recall if we left the club together or separately, but that was all we did that night.

Q Did you have occasion after that time to pick up some money from that club?

A Yes, upon another occasion involving -- a transaction involving cocaine.

Q Will you tell us that transaction, please?

A Yes. This was-- I am not sure of the month-- in 1971. I was with Pacelli. We went to the club at 115th Street and we went in and there was a man there. Pacelli introduced him to me as Skinny.

Q Who was Skinny?

A Mr. DeFranco.

Q Did Mr. Catino have a nickname or a name that was used by Mr. Pacelli in referring to him?

A At that time?

Q Yes.

A At that time he wascalled Herbie or Skinny Herbie. It was Herbie.

I went into the club with Pacelli and Fuzzy was there with Mr. DeFranco and Pacelli said, "I want you to" --

MRS. ROSNER: Objection, your Honor.

THE COURT: Same ruling.

A Pacelli said before we got there, "I think these

guys want to buy a half key of coke from us," and he told me how I should hit it.

I said, "All right."

Q Was Mr. Catino present during this transaction?

Q Yes.

MRS. ROSNER: I am going to object to the leading, your Honor.

A No, Mr. Catino wasn't present this time, as I recall.

THE COURT: The objection is overruled.

Q Go ahead, continue, please.

A We went into the clubband Mr. DeFranco handed me the keys to a car and said, "It is a white Cadillac, old, beat-up white Cadillac Coupe de Ville. It is outside. I don't have the trunk key. So here is just a key to the car, the ignition. So you have to put the package of coke under the seat, under the front seat."

So I said, "All right."

Pacelli said, "I'll wait for you here."

I went out and located the car. It was parked on 115th Street. I drove the Cadillac downtown to the apartment of Susan Weyl, 55 East 9th Street, Apartment 5P. I can't recall if Susan was there, but I think-- I got in the apartment. I had my own set of keys. Like I said, I

don't recall if she was there. But I packaged up the half key of coke and put it under my jacket, went downstairs, opened the trunk, you know, got into the car,and as I was driving put the half a key of coke in the brown bag under the seat.

I drove the car up First Avenue and parked it on-- between 90th and 91st Street on First Avenue. I believe I parked it on a parking meter. I then took--

Q Will you try to keep your voice up a little bit?

A Yes.

I parked the car in a parking meter. I took a cab -- I locked the car and I took a cab up to 115th Street area and I got out of the cab, I walked back into the club.

Pacelli was there with Fuzzy and De Franco.

I gave the keys and the registration ticket to DeFranco, told him where the car was and where the coke was in the car.

Q Did you give him the keys or did Mr. Pacelli --

MR. PELUSO: I am going to object to the leading at this time, your Honor.

MR. LAVIN: Withdrawn.

Q Who gave the keys to the car to Mr. --

A I can't recall exactly if I gave them to him this time or if I handed them right to Skinny DeFranco, if I

gave them to Vinnie. I don't recall, I did so many of these moves. I don't recall this time.

MRS. ROSNER: Objection, move to strike the remark, your Honor.

THE COURT: Overruled. The motion is denied.

Q Did you go back to that club after that time?

A Yes, but before I went back Pacelli said to me, "Listen, I have something to do tomorrow. I want you to come up here and pick up $5500 from these two guys."

And then he looked at Fuzzy and DeFranco and said, "Is that all right?"

They said, "Yeah."

I said to Skinny, "What time should I come?"

He said, "About 7:00 o'clock at night, 8:00 o'clock."

Q By Skinny, you are referring to who?

A DeFranco.

Then he said to me and Fuzzy said to me, "Listen, come in the club and if there is nobody in the club, go up the stairs in the club and there is two doors at the top of the stairs and the one on the left is where I will be, we'll be, knock on that door."

I said, "All right."

Pacelli told me to pick up $5500 from these men.

Q Did you go back that night?

A No. I went back the following night --

Q Tell us what happened.

A -- at that time they told me and there was nobody in the club except some old bum, and I said, "Where is anybody," and he went like that, upstairs. So I went upstairs and knocked on the door and De Franco opened the door and Fuzzy was sitting at a table counting a large quantity of money.

He said, "Oh, I'm glad you came because we got your money for you."

I said, "Oh, okay."

So he handed me a package of money.

He said, "You want to run it down?"

I said, "All right," and I counted it out and there was $5500 in I think it was tens and twenties, I think, dollar bills.

So I said, "Okay, that's it, I'll see you."

They said, "Tell Vinnie to come around because that's pretty good coke and we could use some more."

I said, "Well, we don't have anything else right now, but I'll tell him you want to see him."

They said, "Okay," and I left the club and took the money back to my apartment.

Since it was bad money, the next day I went to the bank, around a couple of banks, and changed the little bit of money, the $5500, I changed it into fifties and hundreds at different banks, you know, different banks around the city.

Q Was there another transaction involving that white Caddilac subsequent to that?

A Was there another one?

Q Yes.

A Yes, there was.

Q Will you tell us about that, please.

First of all, can you tell us when it was?

A Yes, after the one I just told you about, in the fall, I think, of 1971. I am not sure what month, but I know it was October, November or December, some time in there. I believe that's when it was.

I went to the club with Pacelli. We went in and came back and Fuzzy was there and DeFranco was there.

He said, "We are going to give a key of coke to Fuzzy and Skinny DeFranco."

I said, "All right."

He said, "Go down to the stash and mix it up."

I said, "Where should I park the car?"

And Skinny said, "Just bring it back in the block,

it's okay this time, just bring it back to the block," meaning the block where the club us.

Q Try to keep your voice up.

A Yes.

So then DeFranco handed me the car keys and a registration ticket and I left the club and found the car parked almost right in front of the club, got into the car, the Caddie, and drove down to this 55 East 9th Street apartment of Susan Weyl's, where the junk was stashed at the time.

I went up there and mixed up the key of coke, bagged it up, put it in a brown bag, put it under my coat, and went down and threw it under the seat of the Caddie as I was driving.

I drove the car right into the block of 115th Street, East 115th Street, between Pleasant and First Avenue, locked it and went into the club.

I gave the car keys and the registration ticket to De Franco, I believe, and Pacelli said, "How's everything?"

I said, "Fine, the car is right outside."

Then either we left the club together or Pacelli stayed there and played cards and I left. I can't recall exactly what happened then.

Q Was there another transaction involving a Buick or a Pontiac?

A Yes, there was.

Q Can you tell us when that was?

A It was also in-- let's see-- in the fall, meaning I think September, October or November of 1971, I think, where I went to the club with Pacelli. We went in and Catino and Fuzzy were there and Pacelli said, "We're going to see if we can sell these guys some coke," and we went in and had a conversation with Catino and Fuzzy --

MRS. ROSNER: I objeet, your Honor, at this point on the ground of double jeopardy.

THE COURT: The objection is overruled.

A I stood in the side. Pacelli had a conversation with Catino and DeFranco, Catino and Fuzzy, and then Pacelli gave me these car keys and registration ticket and Catino said, "There is a black or a blue Pontiac Grand Prix or a Buick Riviera"- I don't recall; it was night time -- he said, "double parked on the street outside the club down about 20, 30 feet."

He said, "Take that car and put the coke in that car."

So I went out and got the car and drove down to Susan Wey's apartment at 9th Street, parked the car around

there, went up and mixed up the key of coke, bagged it up and put it in a brown bag, after I had sealed the plastic bag, went down and put it in the trunk of that Buick or Pontiac, and I don't recall exactly where I parked that car.

I think I parked it in the area of the 90's on First Avenue and took a cab back to the club, went in and gave Pacelli the keys and the registration, and that was the end of that night's transaction.

Q The transactions you have testified to, did you have any procedure regarding the narcotics you were delivering as far as what you did with it before you delivered it or when it first was brought into 1420?

A Yes.

MRS. ROSNER: I object to testimony about procedure, your Honor.

THE COURT: Overruled.

A Whenever we would get a load in, junk or coke, if there was any question in Pacelli's mind about--

MRS. ROSNER: I am going to object to that, your Honor.

THE COURT: Same ruling.

A If there was any question in his mind about the purity of the heroin he would come up there with me and we

would read the goods, as I described to you before, with a thermometer. He would do this with certain people who he didn't think were giving him pure heroin. Other people, he wouldn't check it out so thoroughly. But each load of cocaine or heroin that came in, that I brought in, which I brought most of it into that 1420 Third Avenue, was checked by me at random samplings, a little bit out of each bag, testing it with the acid or testing it in the acid or testing it for the cocaine, rubbing on the hand, or burning the cocaine in the spoon or rubbing -- you know, the acid or rubbing the coke on the back of the hand or burning the coke into the spoon in the burner of the stove.

Q During the times you were talking about were you yourself using cocaine?

A Yes. You mean which times? When I lived there?

Q 1971, May, November, June, July??

A Yes, I did.

Q How often were you using coke?

A It varied. Different-- no regular amount of time. It depended on just what I felt like doing.

Q Can you give us a number?

A You mean how many times a day?

Q Yes.

A Did I snort it?

Q Yes.

A I don't know. Sometimes none and sometimes a few and sometimes five or sometimes ten times a day. No specific figure.

Q Is that the cocaine that was kept in your apartment that you were using?

A Yes.

Q Is that the cocaine you were delivering to other people?

A That's true.

Q I am going to show you what has been marked Government's Exhibit 4A for identification. Can you identify for us the persons in that picture? 142

A Yes.

Q Can you tell us who it is by where they are sitting? Can you describe who it is?

A Yes. The man on the left is John Negron, the man in the center is Vince Pacelli, Jr., and the man on the right is Benny Fabre.

Q The man on the left you said was John Negron, is that the person you talked about in that cocaine transaction up in Shakespeare Avenue?

A That's correct.

Q And Benny Fabre is the person you used to live with?

A That's correct.

Q Do you recall when that picture was taken?

A No, I have no idea when this picture was taken.

Q Do you know who took it?

A No, I don't know who even took it.

MR. LAVIN: Your Honor, the government offers Exhibit 4 in evidence.

THE CLERK: Any objection?

THE COURT: Received without objection.

(Government's Exhibit 4 was received in evidence.)

MR. LAVIN: May I pass it to the jury while I continue my examination?

THE COURT: I don't think it is necessary.

BY MR. LAVIN:

Q Mr. Lipsky, you have told us already about the transaction involving Louis Mileto and a half kilogram of coke which started and ended in the vicinity of the barbershop or, I should say, ended at the cigar store.

A That's true.

Q Were there any other transactions with people in the location of the barbershop?

A Yes, there were.

Q Can you tell us when the next one after the one you talked about already was?

A Let me see.

Yes, there was the next one chronologically -- I don't know the month exactly, but it was in 1971 -- involving heroin. I went -- let's see. I drove with Pacelli and he parked in the 50s on Sixth Avenue, a block away from the barbershop. He told me to sit in the car and he got out of the car and went toward --

he told me he was going to the barbershop and I should wait in the car. He said he was going to go over to the barbershop and see if he could pick up some goods, some junk from Herby.

So I waited in the car. He came back to the car and he got in the car and said -- handed me some car keys and a claim check for a parking garage.

MRS. ROSNER: Your Honor, may we know who Herby refers to?

THE COURT: Yes. Who is it?

THE WITNESS: Herbert Sperling.

A Pacelli handed me the car keys and a claim check for a parking garage. He said to me, "There is a gray Thunderbird with a black top," I believe he said, "parked in a municipal drive-in-and-park-it-yourself garage west of Seventh Avenue, 54th Street, 55th Street, I think, west of Seventh Avenue," and he said, "Go over to that garage and there is a Thunderbird up there on a certain level" -- I don't remember; the second floor or the third floor -- "of the parking garage." He said, "Go up and get the car, and there is two kis of junk in the trunk, take it down and stash it down at Susan's house, and bring the car back and park it in that garage again, and meet me out in front of the

barbershop, and be careful."

So he handed me a $10 bill and said, "Pay for the car. It's been parked in there all day. Go pay for the car with this," and I did.

I got out of the car, I walked over west of Seventh Avenue and located the Thunderbird in a parking garage, drove down in the parking garage, gave the claim check to the man and paid for the car, and drove downtown to the area of 9th to 10th Street, parked the car, went in the trunk of the Thunderbird and took out a bag, a brown bag, and took it up to the apartment of Susan Weyl. I think she was there. She let me in.

I took the contents of the bag -- it was four 1/2 kilo bags of junk -- and I took the scale out and threw the bags on the scale. Each bag weighed the proper weight. It was over 510 grams a bag.

I threw them back into the bag and threw the bag back into the flight bag with our other goods in the closet and I left Susan's apartment.

I went down and got the Thunderbird, drove back up to the West Side, reparked the Thunderbird in the municipal parking garage on a certain level, and they have markings in these garages such as A3 or where you park your

car so you know where your car is. I went down-stairs and took the new claim check that the man or the machine gave me as I drove in and wrote on the back of the claim check the location of the car in the parking garage.

I then walked out of the parking garage and walked around the front of the barbershop, I believe. Pacelli was standing talking to Herby and Benny. I walked up toward them and he broke away from them and walked with me a little ways and I slipped him the car keys and the claim check for the car. I told him where the car was parked and he said, "Go ahead across the street and wait for me in the car. The car is across Seventh Avenue."

I went across the street and got in the car. He went back to -- he went back to the front of the barbershop and talked to Herby and Benny for some time, a short time, and came and got in the car with me and we drove uptown to his aunt's apartment.

He said, "How was the goods, how were the goods?"

And I said, "They all weighed the proper weight. I guess they are okay."

He said, "All right."

We went to his aunt's house on 118th Street and he went upstairs and he asked his aunt, "Would you get me the package of money I gave you, you know."

His aunt went in the other room and came back with a package of money in a brown bag, I believe. He says, "Barry, you want to run this down."

I sat down at the table and counted down I think it was $20,000. I said, "It's 20."

He said, "Okay, wrap it back up."

I wrapped it back up in rubberbands.

He said, "Hold the money. We'll take a ride downtown after we eat and go to Herby's and give him the money."

So I held on to the money and we took a ride down to the area of Spring Street. Pacelli parked the car. He said to me, "Give me the money."

I gave him the money, the package of money.

He went upstairs. He stayed for a short -- some time.

He came back down and he said, "I gave Herby the 20,000. I owe him 16,000 more, 18,000 more." I can't recall exactly which it was. He gave him a partial payment for the two kis of heroin that I had picked up earlier. He said, "I'll pay him the rest in

a day or so."

Q During the time you were involved with Mr. Pacelli had you been down to the barbershop quite frequently?

A Yes. In that area, yes.

Q I show you Government's Exhibit 8, which is a picture with some writing blocked off. Can you identify any of the people in that photograph?

A Yes, I can.

Q Can you tell us who you can identify?

A Yes.

Q Please do so.

A I think that's Herby Sperling on the corner, that's -- looks like Vinnie with his hand in his pocket, and this other fellow here with the sunglasses looks like Louis Mileto.

Q Would you take the red pencil and mark the names with an arrow to the people you have identified?

A On the picture?

Q Yes, on the picture.

I show you Government's Exhibit 9, which is another photograph. Can you identify any of the persons in that picture?

A Yes.

Q Who?

A That's Vincent Pacelli, Jr.

Q Would you please take the pencil and mark the person you have identified as Pacelli.

A This other man, I am not sure who that is.

Q Can you tell us what area that is in the background?

A Yes. This is Seventh Avenue here and this is I think 55th -- I think it's 55th Street -- and I think this is the Ballantine's Barbershop right here.

Q What about Government's Exhibit 8 for identification; can you identify the background on that?

A This is Ballantine's Barbershop, this is Seventh Avenue, and this is 55th Street, I think, over here.

Q Isthat the barbershop you have been talking about, the one you used to go to with Mr. Pacelli?

A That's correct.

Q Subsequent to that incident you just talked about was there another transaction involving Louis Mileto and the barbershop?

A Yes, there was.

Q Can you tell us when that was?

A Yes. Just prior to Christmas, 1971, about a week or two before Christmas.

Q Can you tell us what happened at that time?

A Yes. I drove with Mr. Pacelli to the area of the barbershop, except this time he pulled up on 56th Street heading west, I believe -- east, out of view of the barbershop. He said to me, "This place is very hot. There is a lot of agents all around. So I'm parking over here. You stay in the car."

He went out of the car and stayed away a while and then a man I knew to be Louis Mileto came walking quickly up to the car, motioned for me to open the door of the car, and he got in, jumped in the car and jumped on the floor in the front seat and said to me, "Quick, quick, drive out of here quick, there is agents all over the place, this place is red hot."

So I drove east across town on 55th Street and he said, "Pull over, and I did so, and he said, "Listen, I have to take this car and I have to put some junk in it."

I said, "All right."

He said, "Where should I meet you?"

And I told him a place and a time. He told me about how long it would take him.

I said, "Listen, the trunk is smashed on this car. We got smashed in the trunk and you can't use the

trunk. We have the key, but you won't be able to close it."

So he said, "Okay, I'll stick the stuff under the seat."

I said, "All right."

I got out of the car and he drove north on Park Avenue and O took a cab over to Margie Jacklone's apartment, and Margie was there, and I went in and I hung around for a while over there, an hour, an hour and a half or so, until I was to meet Louis, and a few minutes before I was to meet Louis I left her apartment at 52 nd Street and walked up to 57th Street and Seventh Avenue. There is a White Tower Restaurant there, and as I walked up to the restaurant I saw Louis sitting on a stool through the glass window with a big bag next to him.

I went in, I sat down, and Louis was sitting here and a bag, a big paper bag, was on the seat, and I sat down next to the bag. The bag was between us.

I said, "What have you got there?"

He said, "I got all kinds of toys for my kids for Christmas. You want to see?"

I looked in the bag and there were all kinds of toys in there. I said, "Where are the keys to the car?"

He said, "In the bag. Reach in and get them."

So I reached in the bag and got them, put them in my pocket. I said, "Where is the car?"

He said, "Over there on 56th Street near First Avenue."

I said, "Where?"

He said, "Parked in front of Penbole's Nightclub, bar."

So I said, "In front of Penbole's? What did you park over there for? That's a bad place. It's red hot."

So he said, "Well, it's early and there was no other place to park. It's early, there is nobody around."

I said, "Where did you park?"

He said, "On a pump, a fire pump."

So I said, "I better go get the car." So I said, "So long," and I got up and I left the White Tower, walked over and got -- found the car, a Plymouth, and drove the car down to Susan Weyl's apartment area, parked the car and pulled the goods, heroin, out from under the seat. There were four 1/2 ki bags and I put them in the bag that they were in and took them up to

Susan Weyl's apartment, threw them on the scale and weighed them, and the weight was correct, and I threw them into the flight bag and whipped them into the closet, and I left her apartment and took the Plymouth and went back up to Pacelli's aunt's house, and he said, "What happened?"

I told him that I had gotten the goods and that the weight was all right.

He said, "Good."

Then he asked his aunt to go in the closet and get him the package of money and she went in the other room and she returned with the package of money.

Pacelli said, "Barry, you want to run it down," and I counted it down. I think there was $20,000, as before.

He said, "Okay, count it."

I did. It was the right amount of money. And I took the money. He said, "You hold on to it."

I put it in the pocket of my coat, wrapped with rubberbands and a brown bag.

So we had dinner and then he said, "Let's take a ride down to Spring Street, I'll give this money to Herby."

We rode down to the area of Spring Street.

Then he said, "Give me the money." I gave him the money.

MRS. ROSNER: Your Honor, may we know who Herby refers to again?

THE COURT: I beg your pardon?

MRS. ROSNER: May we know who Herby is again? I am sorry for interrupting.

THE WITNESS: Herbert Sperling.

THE COURT: Sperling?

THE WITNESS: Yes.

A Pacelli went up and went into this doorway and stayed some time. He came back, said, "I gave Herby the 20 grand and I owe him I think 14,000 more or 16,000 more." I forgot the exact price that we had to pay Sperling.

Q How much was a kilogram selling for of heroin in 1971?

A Anywhere -- I believe he paid anywhere from 17 to 21 thousand dollars a kilo. It was supposedly a kilo.

Q What about cocaine?

A Either 10,000 or 10,500, 11,000, or sometimes 12,000.

Q Was there another transaction in that latter part of 1971 involving John Negron and the barbershop?

A Yes, there was.

Q Tell us about that, please.

A Yes. Pacelli said to me one evening, he said, "Tomorrow I am going to pick you up at a certain time. We are going to try and do a deal, do something a little different."

I said, "What are you going to do?"

He said, "Well, John Negron has this coke that we got from him before and he wants 12,000 for it, and Herby wants it untouched, and he will give me $16,000 for

it so all we will be is middlemen. We won't whack the goods. We won't step on it or hit it. We will just take off the top, make it our weight, put it in our bags and turn it over to him and make a quick $4000, just sort of be a middleman."

I said, "All right."

The following day Pacelli picked me up and we went -- it was a weekend, I think, I think it was a weekend, a Saturday or a Sunday, and we drove into the area of the barbershop, but he parked on a, I think, an eastbound street just off Seventh Avenue, just east of Seventh Avenue, and he said, "I have to meet Herby in Cecil Tavern," which is a bar near the corner of Seventh Avenue, about 54th Street, I think.

Pacelli went out of the car -- this was in November or December, I think -- he went into the Cecil Tavern and came out some time later. He got behind the wheel again. He gave me a package of money and said, "You want to run this down," and I did, I counted it down in my lap. There was $12,000 in good money, 50s and 100s.

He said, "Okay, hang on to it."

I stuck it in my pocket.

We drove up to Shaskespeare Avenue. He parked the car on Shakespeare. He said, "Let me have

the money."

I gave him the money. He said, "You wait here." He got out and walked down the hill to a house, I think it was John Negron's house, and went into the door, and a short time later John Negron came out and got in the car and drove up the hill past me away, and a short time later, some time later, John Negron drove back at the bottom of the hill and drove up the bottom of the hill and parked the car, got out of the car and walked back into the house.

A short time after that Pacelli came out and had his coat closed and he came and he got in the car with me and he drove and he took out a large bag from under his coat and he said, "Here, check this out. Open it on the floor and keep it low." And I did and it was coke, tannish beige, beige-white coke, with a lot of rocks in it that were similar a little bit to the coke we had gotten from John Negron some months previous.

So he said, "Check it out. Take a couple of blows of it, see how it is."

So I put it on my tongue, put it on my lips and gums and in a few minutes they got numb, and took a little snort of it and it was pretty strong.

He said, "Okay, good, wrap it up, put it back

in the bag," and I did so.

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Pacelli drove down to the area of 9th Street where our stash and our equipment were at that time in Susan Weyl's apartment, and he then said to me, "Listen, go up there and don't touch these goods, don't throw anything into them; just skim off the weight if it's over our weight. Make them -- make the ki weight about 952 grams."

I said, "All right."

He said, "Don't add anything to it; just take off anything above 952 grams and throw it in the excess bag" that we kept.

I said, "All right, fine."

He said, "Bag it up in our bags, double bag it. Do this quick and I will be waiting for you down here. Take out some big rocks, save some big rocks so we will have some rocks left."

I said, "All right."

I went up to Susan Weyl's. I don't think -- I can't recall if she was there or not. I went in. I took about 20 minutes to rebag the coke and weigh up the proper weight of 952 grams, put them in bags of 476 grams each, double bagged them, sealed them, put them in a brown bag and went down, put the excess away, locked the

apartment and went downstairs, and Pacelli was driving down 9th Street. He picked me up in the car.

He said, "Stick that bag under the seat" -- I was holding it between my feet in the front of the car.

He drove up to the same -- to an area in about 55th Street, around 55th Street or -- on Sixth Avenue. He said, "You wait in the car here and don't get out and keep that stuff low."

He left the car and he came back a short time later. He got in the car with me and he said, "Listen, you remember that Thunderbird you have driven?"

I said, "Yes, I think so."

He said, "It's up in that parking garage on a certain level, second or third floor." I don't recall which floor. He said, "Take that coke, stick it inside your coat, be real careful, walk over there." He handed me these keys. He said, "Here's the keys to the Thunderbird. Go up there and open the trunk and then whip this package of coke into the trunk of the car. And then I will be driving around. I will pick you up or I will meet you in front of the barbershop."

I said, "Okay."

He said, "Be careful."

I got out of the car, I walked west over toward the parking garage and located the Thunderbird. I opened the trunk of the Thunderbird, leaned in as if I was doing something, and threw the bag of coke into the left rear of the trunk of the Thunderbird. I locked the trunk and I left the parking garage.

As I was walking up 55th Street I think, walking east, Pacelli was coming down in the Plymouth and he saw me and I waved and he stopped and I got in the car.

He said, "Any problem?"

I said, "No, everything was allright."

He drove around and up Eighth Avenue across 56th Street and drove onto Seventh Avenue again and parked across the street from Ballantine's Barbershop. He got out of the car. He got out of the car and walked over and saw Herby Sperling in front of the barbershop and the two of them had a conversation.

Then Pacelli and Herby walked into the barbershop, and in the back of the barbershop Ben Mallah was sitting in a chair with his feet up, and I imagine -- I think they had a conversation.

MRS. ROSNER: Objection, your Honor, and move to strike.

A Well, they were standing together in the back 149
of the bargershop for --

MRS. ROSNER: There is an objection, Mr. Lipsky.

THE COURT: All right. What you think is struck out. Just recite what you heard.

A I went across the street and got in the car, Pacelli's car. He went over and stood with Sperling a few minutes in front of the barbershop, and then the two of them walked into the barbershop, in the back, where Ben Mallah was sitting with his feet up, and they stayed in a group there for a few minutes, and then Pacelli came back out and got in the car with me and he drove, and we went to eat, I believe, and he said, "I have to go down to -- downtown tonight, down to Derby's, and pick up -- pick up the other $4000 he owes me."

MRS. ROSNER: Objection to the hearsay, your Honor.

THE COURT: Would you read back that last part.

(Last part of answer read.)

THE COURT: That is received subject to connection.

A Later that evening he said, Pacelli said to

me in the car, "That's a very quick, clean deal and I like to do a couple of those a week. And every time I make"-- he said, "These people -- these people that John Negron gets his coke from only work about three months out of the year and they are going to go out of business for the year soon. They have about 25 or 30 kis of coke left, and I am going to try and get John Negron to hold these -- this coke for us, and maybe I can take it all. If it's that good maybe Herby will take most of it and I can make a nice piece of change here, and every time I make" -- I forget how much he said, $5000 or so -- "I will give you $1500."

I said, "All right."

Q How much were you getting paid during this time?

A Well, at first when I started working I got every time I made a move, myself and another worker, there were three workers at one time, myself and another worker, at first, were getting $200 a move, and then when there were only two workers, two of us, myself and another fellow, Ramirez, we got $500 a week most of the time.

Q You testified that it was part of your duties to change money?

A Yes.

Q How often did you do that?

A Every time Pacelli gave me money that we picked up from customers it was bad money, singles or fives or tens or twenties, he would give me a load of it and tell me to take it home, that one afternoon, the next day, go around to the banks and change either 20 or 30 o4 40 thousand dollars at a clip into good money, fifties and hundreds, and I did this at some month -- few months after I started to work for him.

Q Was there any specific banks he used?

A There were quite a few banks I used. I used banks on Madison Avenue and 57th Street and Third Avenue, and there was one bank where there was a lady who thought she knew me, and I told her.

MRS. ROSNER: Objection, your Honor. Move to strike out.

THE COURT: You can't say what the lady thought but you can say what she said from which the jury can draw an inference as to what she thought.

THE WITNESS: All right.

THE COURT: What did she say, if anything, about you?

MRS. ROSNER: Most respectfully, your

Honor, I would object on the ground she is not a part of the conpsiracy.

THE COURT: Objection sustained. Go on to the next question.

BY MR. LAVIN:

Q Do you recall that woman's name?

A Yes, I think her name was Mrs. Keenan. I think it was K-e-e-n-a-n, something like that.

Q How much money did you change at one bank at one time?

A Well, sometimes you could only change a thousand dollars at a bank, and sometimes two, depending on the cashier or the story that he gave them. You could change some times up to five and six thousand, but I never changed more than that amount any one day in any one bank unless I would go from one line to another when the bank was busy. Sometimes they become suspicious.

Q Did there come a time when you purchased bonds at someone's direction in 1971 just before Christmas?

A Yes.

Q At whose direction?

A Mr. Pacelli.

Q Can you tell us what he said to you at that time?

A We were on East 86th Street and he said he was walking down to the florist's shop to see somebody and he gave me three $50 bills and said, "Go into the bank, one of these banks over here, and buy $200 -- two $100 savings bonds and buy them in these names, and I am going to give them to somebody for their Christmas presents for his kids."

And I got out of the car and I went over to a bank and I bought two $100 savings bonds in these names.

Q In whose names?

A One was in the name of Gus Sperling, one was in the name of Nick Sperling, I believe.

Q What name did you use in buying the bonds?

A Vincent Brown I think.

Q Why did you use that name?

A I just made it up, just on the form.

Q Did someone direct you to use a different name?

A No. I said, "What name should I put on the form?"

He said, "Just make up a name and an address.

Q Who said that?

A Pacelli said that.

Q I show you what's been marked Covernment's Exhibit 5 for identification. Can you identify those for us?

A Yes, it's my handwriting.

Q What are those?

A These are the applications you have to fill out to buy a savings bond.

Q Is that the applications you filled out in the incident you just described to us?

A I believe so. That's my handwriting, yes, it is.

Q Are those the copies, the payee's copies or the purchaser's copies, of the savigs bonds?

A These?

Q Yes.

A I remember keeping these. I'm not sure but I -- I don't know if this is the back part of the bond when you get it. I gave them to Pacelli. I don't know what he did with them after that.

Q Did he tell you who he was going to give them to?

A Yes.

Q Who was that?

A Herby Sperling.

MR. LAVIN: Your Honor, the government will offer these, Government's Exhibit 5.

Q You testified before that the narcotics were moved down from your apartment to the apartment of Susan Weyl?

A That's correct.

Q At whose arrangement was that done?

A Pacelli told me to move them down there.

Q Did he tell you why he wanted them moved down?

A Yes. One day I was in the Le. Drugstore Restaurant at 64th and Third Avenue, 63rd, 64th Street, and this girl Susan Weyl came around.

She said, "I want to see Vinnie."

I said, "What's the matter?"

She said, "I don't know, I just have to see him. It is important."

I said, "All right, when I see him I will tell him you want to see him."

So shortly thereafter he came, Pacelli was at Le Drug Store Restaurant a couple of days later or so, and he talked to this girl Susan Weyl, and he told me that she was broke and she needed some money and how could she do something to earn some money, and he said, "Well, all right, I have something for you, an idea," and he told me,he said, "We will throw her some money and we will move the stash of goods and equipment from your apartment at 1420 Third

Avenue down to her apartment at East 9th Street because I don't want you to have all the heat because you are doing all the work now, changing all the money. You have got money in your apartment and you have got the goods up there, and it's not good to have the money and the goods together.

"You're doing a lot of the moving around and shoud not have the goods there with you."

I said, "Okay, that's good enough for me."

Q To your knowledge was something done to the door of Miss Weyls' apartment?

A Yes.

Q What was that?

A Pacelli gave me some money and said, "Got to beef up her door, got to fix her door, get a locksmith around here and go ahead and put a bunch of -- fix it up. Put a bunch of bolts. Get the locksmith to fix it up so it is really barricaded. Put on a Segal lock and change the existing cylinder lock."

I went out. He gave me some money, I forget how much, over a hundred, I think, went out and walked around and found a locksmith around Union Square, just north of 14th Street, I think, and -- yes, and I got the locksmith to go over there and he put on about ten heavy duty, real heavy-duty slide bolts, even one about this big that slid

into the-- into brackets that the locksmith put on the wall and he put about five of them on each side of this door; plus he installed a Segal lock, a Segal twist-lock, and he changed the key, cylinder of the existing lock, and he made three sets of keys.

I gave Susan Weyl a set of keys. I gave Pacelli a set of keys and I kept a set of keys.

And then Susan Weyl told her-- well -- Pacelli told me to tell Susan Weyl to tell the doorman that we were friends of hers and we had keys to the apartment, it was okay, and we could go in and out on our own time, whenever we wanted to go in and out.

Q Did there come a time in the summer of 1971 when Mr. Pacelli was married?

A Yes.

Q Did you play some part in the wedding?

A Yes.

Q What was that?

A I arranged all- most all of the arrangements for the wedding, including the catering of the wedding affair at the Tavern-on-the-Green for the wedding party, and then the buffet or reception at the Pierre Hotel and then the sit-down dinner at the Pierre Hotel, and arranging for the 16 ushers to rent tuxedos and flowers and--

Q So you ran the wedding or arranged it?

A Well, I tried.

Q I show you Government Exhibit 7 which are a group of photographs.

Can you look at those and identify them by number and tell us the people in those pictures?

A Yes.

No. 51, kneeligg down from the left, is a man by the name of Gary Fredericks, Jack Stewart.

Q Did you have occasion to engage in a narcotics transaction with Jack Stewart?

A Yes.

Q Tell us next one.

A Bruce Gordon, Mike Russo, another man whose name I don't recall except he was Junior something, Abby Perez.

Q Did you have occasion to engage in narcotic transactions with Mr. Perez?

A Yes.

Q During the time you were working for Mr. Pacelli?

A Yes.

Q At Mr. Pacelli's suggestion or order?

A Instructions, yes.

Q Instructions.

A Eddie Bless.

Q Did you haee occasion to engage in narcotics transactions with Eddie Bless?

MR. DUKE: Objection to leading the witness.

THE COURT: Mr. Duke objected. I think it is the form. It should be rephrased.

Q Can you identify Eddie Bless in that picture?

A Yes.

Q Did you engage in any narcotics transactions with that individual?

A Yes, I did.

Q During what time?

A 1971. I am not sure of the month. I think it was in the fall, September, October, November, somewhere around there.

Q On whose instructions?

A Pacelli.

MR. DUKE: Objection, your Honor.

I object to this whole line of questioning.

THE COURT: Objection sustained.

Did you do so on the instructions of anyone?

THE WITNESS: Yes, I did.

THE COURT: On whose instructions?

THE WITNESS: Pacelli and Abby Perez.

A Now, on the top left, Al Bracer, myself, another man with a mustache, I don't know-- I forget his name-- Dave-- David something.

Bennie Fabre. Manny Bayron. Beverly Pacelli, Vincent Pacelli, Junior, Barbara Jalaba, Jack Bless,one cousin of Beverly Jalaba's, and Beverly Jalaba's brother Ronnie.

Q Did you have occasion to engage in narcotics transactions with Jack Bless?

MR. DUKE: Objection.

THE COURT: Overruled.

A Yes, I did.

THE COURT: At what time?

THE WITNESS: At numerous times, your Honor.

THE COURT: In what period of time?

THE WITNESS: In 1971.

THE COURT: Was this on your own behalf or on somebody else's behalf?

THE WITNESS: I was instructed to do these transactions.

THE COURT: By whom?

THE WITNESS: Pacelli.

A Frank Serrano, and two flower girls who were Pacelli's nieces.

Q What picture is that, the number?

A 51.

Q What picture is that now?

A No. 195.

Q Who is in that picture?

A Al Bracer, Vincent Pacelli, Jr., Albert Perez.

THE COURT: What was the occasionfor picture No. 51? What was the occasion, if any?

THE WITNESS: Where was this?

THE COURT: Yes.

THE WITNESS: This was at the Tavern-on-the-Green Restaurant after the church wedding.

THE COURT: In other words, in connection with the wedding matter?

THE WITNESS: Yes, sir.

THE COURT: When did the wedding take place?

THE WITNESS: June 6, 1971.

THE COURT: Thank you.

A Picture No. 178, Loretta Pacelli, Manny Bayron, Beverly Pacelli, myself standing, Vincent Pacelli, Jr., and Abby Perez.

THE COURT: Are these also part of the wedding?

THE WITNESS: Yes, sir.

THE COURT: Was 195 part of the wedding, too?

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THE WITNESS: Yes, at the hotel.

Picture No. 152, Abby Perez.

THE COURT: Is that also part of the wedding?

THE WITNESS: Yes.

MR. LAVIN: Your Honor, atthis time the government offers Government Exhibit 7 in evidence.

THE COURT: Are they all marked Exhibit 7?

MR. LAVIN: Yes,they are just one exhibit marked 7, the four pictures.

MR. DUKE: Your Honor, I object to Exhibit 7, and I will hand up my reasons.

THE COURT: This objection is marked Court Exhibit 1.

(Court Exhibit 1 marked.)

THE COURT: The objection is overruled.

That being the only objection, Exhibit 7 is received in evidence.

(Government Exhibit 7 received in evidence.)

Q I show you Government Exhibit No. 6.

Can you tell us what that is?

A Yes, it is a drawing, diagram of the apartment I lived in at 1420 Third Avenue, New York.

Q Is that in your handwriting?

A Yes, I think it is. Yes.

Q Did you make all the notations on that?

A I drew-- well, except for the signature here; and the initials here, I wrote everything that is on this paper, I believe.

MR. LAVIN: The government offers the front of Exhibit No. 6 in evidence.

MRS. ROSNER: Your Honor, I will object on the ground it is a prior consistent statement and it is not more than self-serving.

Q Mr. Lipsky --

THE COURT: Just a minute. I want to see the exhibit. There's been an objection made.

MR. DUKE: Your Honor, I object on the same ground and on the further ground that it is just testimony in an improper form.

THE COURT: Mr. Lipsky, willyou look at just the lines and the words within the perimeter of the lines, and state what this purports to be, and what the words relate to.

THE WITNESS: Yes.

This is a -- the lines are the outline of the outside walls of the apartment I lived in at 1420 Third Avenue, and you want to know what the lines inside are?

THE COURT: Yes.

A Where the different articles of furniture and the interior walls were, and different articles of furniture were located in this apartment.

THE COURT: And the words themselves, what do they describe?

THE WITNESS: Couch.

THE COURT: Kind of furniture?

THE WITNESS: The type, the article of furniture or the furniture or-- what it was. It labelled this little box and this little box as to the exact items they were,what articles of furniture that they were, and what place they occupied in this apartment.

THE COURT: Did you make that drawing?

THE WITNESS: Yes, I did.

THE COURT: Is that a fair and accurate representation of the condition of the apartment so far as its character, that is, its character and the location of the articles of furniture at the times you have been testifying to?

THE WITNESS: Yes, your Honor.

THE COURT: It may be received in evidence without the rubric at the top which will be masked out.

What I suggest that you do, Mr. Lavin, is-- well, I will have it done-- we will have a Xerox copy made which

does not pick up the language up at the top.

MRS. ROSNER: Your Honor, I take it your ruling also refers to the writings on the back part of that?

THE COURT: No, though that was not offered.

MRS. ROSNER: Iwasn't sure, Judge. Thank you.

THE COURT: The writings on the back were specifically excluded by Mr.-Lavin.

MRS. ROSNER: Thank you, Judge.

THE COURT: It was only the so-called schematic drawing.

MRS. ROSNER: My misunderstanding, your Honor. Thank you.

THE COURT: This may be marked in evidence accordingly.

I take it there is no objection to substituting a Xerox copy for the original?

MRS. ROSNER: No, your Honor.

THE COURT: Mr. Duke and Mrs. Rosner, will you please look at this and see if this sufficiently masks out the material subject to my ruling?

MRS. ROSNER: Yes, thank you, your Honor.

THE COURT: All right. I will have my clerk obtain sufficient copies.

(Government Exhibit 6 received in evidence.)

THE COURT: The Xerox will then be substituted in place of the yellow paper.

Mr. Lavin's marker was on the paper and I have removed it, I think.

MR. LAVIN: Thank you.

THE COURT: It is an earlier exhibit mark which does not apply.

Q Mr. Lipsky, you were indicted in the courthouse for violation of the federal narcotics laws, were you not?

A That's correct.

Q Do you have a present understanding with the government or with anyone else with respect to that indictment?

A Yes.

Q What is that understanding?

A That I won't be prosecuted on that indictment.

Q Did you testify last June, June of 1972-- 1972, that you had no such understanding?

A I can't hear you, Mr. Lavin.

Q Did you testify in June of 1972 in this courthouse that you had no such understanding?

A That's true, yes.

Q Did youtestify in December of 1972 to that as well?

A That's correct.

MR. LAVIN: May I have just a moment?

Your Honor, at this time the government would offer Government Exhibits 2, 3 and 5 which were offered before.

2 is the rent receipts. They have all been shown to counsel.

3 is telephone records of 1420 Third Avenue, and 5 is the application for the savings bond.

THE COURT: Any objection?

MR. DUKE: I don't believe there are any objections.

THE COURT: What is that?

MR. DUKE: I don't believe there are any objections.

MRS. ROSNER: I have some, your Honor.

I object on the ground there is no proper foundation, that they are hearsay as to my client and they are not connected.

THE COURT: Received, 2 and 3 are received. Exhibit 5 is excluded.

(Government Exhibits 2 and 3 received in evidence.)

THE COURT: Ladies and gentlemen, I think it is

time now for you to have a recess, so we will take a short recess for about ten minutes.

(Recess.)

THE COURT: Mr. Lavin, there will be a time when you can pass your exhibits around to the jury, so you don't have to interrupt. I am just telling you I am not depriving you of the opportunity to pass your exhibits.

MR. LAVIN: Good, your Honor, the government has no more questions.

THE COURT: Mr. Duke.

MR. DUKE: Yes, your Honor?

THE COURT: You may proceed with your cross examination.

MR. DUKE: I am sorry. I wasn't aware that they had completed.

CROSS EXAMINATION

BY MR. DUKE:

Q Mr. Lipsky, I believe you testified on direct that you got in trouble down in Miami in connection with stolen securities.

When was it that you sold the stolen securities?

A I believe it was 1969, I think.

Q Was it in March of 1969?

A Like I say, I think it was 1969. It could have been march of '69.

Q Did you sell those stolen securities pursuant

to an arrangement with Vincent Teresa?

MR. LAVIN: Objection.

THE COURT: Objection sustained.

Q Did you testify, Mr. Lipsky, to a grand jury in the Southern District of Florida on May 7, 1970?

A Mr. Duke, I am not sure of the date, but I testified I think it was in May of '70 in Miami.

Q Was that the testimony that you referred to on direct as having been untruthful?

A That was untruthful testimony.

Q Did you testify in thatgrand jury proceeding, Mr. Lipsky, that you had sold some stocks which were stolen stocks?

MR. LAVIN: Objection, your Honor.

THE COURT: Overruled.

A Did I say in that Florida grand jury that I sold stolen stocks?

Q Yes.

A I can't recall if I said that I sold stolen stocks, because it's been some time now. It's 1973 and I don't recall the exact questions that I was asked and the answers I gave to that grand jury.

Q Do you recall if you testified that you sold a certain quantity of American Express securities?

A Well, Mr. Duke, like I just said, I don't remember if I was asked that question, but I did sell in fact some American Express Company stock.

Q You did in fact sell it?

A Yes, I did sell it.

Q And that stock was in fact stolen stock?

A That's correct.

Q Did you testify to that grand jury that the person to whom or who delivered the stock to you was a person named Paul McGaughy?

MR. LAVIN: Objection.

THE COURT: Objection to the form is sustained.

Q Did you identify the person in this grand jury testimony from whom you received the securities that you sold?

A Again, Mr. Duke, I tell you, it's been a long time. I may have said the name of the person, the customer who sold the stock through me, as being Paul W. McGaughy.

THE COURT: Mr. Duke, the correct form on cross examination is were you asked this question and did you give this answer.

MR. DUKE: Very well.

Q With reference to the person that brought you the stock, Mr. Lipsky, were you asked the following questions and did you give the following answers to that grand jury in Florida:

"Q When he first came in he made out a customer's card, a cue card?

"A No, there is no requirement for the customer to sign anything.

"Q Doesn't he sign a signature card?

"A Yes, a customer signs what we call a cash card.

"Q Did he sign that?

"A I remember he signed that, yes, sir.

"Q What name did he use?

"A The same name you have just stated to me, Paul McGaughy. I believe it was M-c-G-a-u-g-h-y.

"Q I am sorry, I left the y off."

Were you asked those questions and did you give those answers?

MR. LAVIN: Objection, your Honor.

THE COURT: I am going to allow this question. I don't see its relevancy either for purposes of cross examination of the direct examination or on the issue of credibility, but it may be laying a foundation

for something that I haven't yet heard. So I will allow the inquiry.

A Again, Mr. Duke, I will say to you I have never -- not never -- have not seen my actual testimony at the Florida grand jury in 1969 for some time. If you are saying to me that those are the actual questions and answers that I made at that time -- I am a little confused. Can you give me that question --

MR. DUKE: Your Honor, can I show it to the witness?

THE COURT: Yes. Would you come up just a minute, Mr. Duke? I want to ask you something here at the bar.

(At the bench; discussion off the record.)

(In open court.)

THE COURT: Ladies and gentlemen of the jury what the lawyers and I have been talking about is this: Except for one additional question that will be asked of Mr. Lipsky this afternoon, by agreement with counsel we will suspend with Mr. Lipsky this afternoon and he will come back on the stand for cross examination tomorrow morning..

You will remember that this morning we had Mrs. Cecile Mileto on the witness stand and one of the

lawyers, Mr. La Rossa, was engaged in another court. He has come in now and in order to accommodate Mrs. Mileto so she can get through and Mr. La Rossa so he can get through the counsel have agreed with the court that we will suspend after the next question with Mr. Lipsky until tomorrow morning with him and take up with Mrs. Mileto.

Go ahead. Just finish that one question.

BY MR. DUKE:

Q Mr. Lipsky, I will show you a document here. Would you read the portion that is --

THE COURT: He wants to know do you now, after seeing this, recall that that was the question that was asked and that answer given.

A This is 1970, Mr. Duke.

Q If I said anything other than that --

A All right. Just a moment.

Where it is marked, Mr. Duke?

Q Yes, where it is marked. See if that refreshes your recollection.

A "When he first came in"?

Q Yes.

A Yes, Mr. Duke. What did you want to ask me?

Q The question --

THE COURT: Do you now remember those questions and answers as having been questions that you were asked and answers that were given at that time?

THE WITNESS: Yes, I very well may have been asked this question, your Honor, along with other ones.

THE COURT: All right.

MR. DUKE: Thank you.

THE COURT: You may step down. You will return tomorrow morning.

THE WITNESS: All right.

THE COURT: We will take Mrs. Mileto.

MR. LAVIN: I sent down for her. She will be up shortly.

THE COURT: All right.

(Witness temporarily excused.)

THE COURT: Mr. La Rossa, could you come up for just a minute. I want to ask you one question.

(At the bench; discussion off the record.)

(In open court.)

THE COURT: Mr. Lavin, in view of the rush with which Mr. La Rossa has gotten here, he finds that his case over in Brooklyn will not start till 11. He thinks he has about 20 minutes with Mrs. Mileto, and he would like to do that tomorrow morning at 10 o'clock and still be able to get over to Brooklyn, which will give him a chance to catch his breath. So if you and Mr. Duke don't object, we will try and get Mr. Lipsky back, finish up as far as we can go with him, and then if you have some question about Mrs. Mileto you will ask her that in the morning. Mr. La Rossa will cross examine in the morning and everybody will be accommodated. Is that procedure all right?

MR. LAVIN: Fine, your Honor.

THE COURT: Mr. Duke, can you change gears and come back again?

MR. DUKE: I think so. I will try.

THE COURT: All right. We will do that then and you are excused for that purpose except that I expect you to remain in court, if you can.

MR. LA ROSSA: Sure I will.

THE COURT: And get Mr. Lipsky back again. As the jury can see, we try to accommodate

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everybody we can.

And I don't want to hold you too late. I know that the weather is bad and travel is difficult.

What I plan to do would be to suspend for the afternoon within the next half hour or so. We just have another half hour of testimony this afternoon.

(Pause.)

MR. MITCHELL: Your Honor, may I approach the bench for a moment?

(Discussion at the bench; present, the court and Messrs. Mitchell and Lavin; off the rec ord.)

B A R R Y L I P S K Y resumed.

THE COURT: Mr. Lipsky, we decided to change the arrangement. You will go on for another half an hour this afternoon and we will take Mrs. Mileto for another half hour in the morning.

CROSS EXAMINATION CONTINUED

BY MR. DUKE:

Q Mr. Lipsky, subsequent to your grand jury testimony in the Southern District of Florda in May of 1970 wereyou indicted on a four-count indictment concerning the sale of those securities?

A Was I indicted on the stock case in Miami?

Q Yes, on a four-count indictment.

A I think I remember it being four counts, yes, I was indicted.

Q Did you subsequently, in December, 1970, stand trial on that offense? Did you go to trial?

A Yes, I think it was December 7, 1970.

Q And were you on trial when a person named Vincent Teresa testified? Were you present in the courtroom?

MR. LAVIN: Your Honor, I object to this line of questioning.

THE COURT: I will sustain the objection at this time, there being no indicated relevancy or materiality to any issue in this case.

Q Mr. Lipsky, the person that you received the stolen stock from, and the person with whom you had the arrangement to sell this stolen stock was Vincent Teresa, was it not?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Did you, Mr. Lipsky, come to an understanding with the prosecution in connection with that case which involved your pleading guilty to the offense or one count of the offense?

A My attorney reached an understanding with the U. S. Attorney's office I believe.

Q As a result of that understanding you pled guilty to one count of the indictment?

A That's correct.

Q And when was that guilty plea, if you recall?

A I believe it was October 28, 1971. I believe.

Q You were subsequently sentenced on that guilty plea?

A That's correct.

Q When were you sentenced?

A I think I was sentenced then.

Q The same day as the plea?

A I'm not sure exactly how it worked but I believe I was put to the -- I got the probation the same day that I appeared in front of the judge.

Q You got three years probation?

A That's correct.

Q Are you still on probation on that case?

A That's correct.

Q Are you still on probation on that case?

A Yes, I assume I am, yes.

Q There have been no proceedings to revoke your

probation?

A I have never heard anything other than one time a question was asked to me by a probation officer in this building downstairs in an assistant United States attorney's office if I had ever been arrested between the time I was put on probation and the time I was picked up on the other charge in February and March of '72, and I answered him no, I have never.

Q So far as you know, then, no action has been taken by the court in Florida to revoke your probation?

A Not so far as I know.

Q What were the conditions of your probation?

A I had my probation transferred from Florida, Miami, Florida, to New York City.

Q That's not my question, Mr. Lipsky. You were not sentenced to jail on some specified conditions, isn't that right?

A That's correct.

Q What were those conditions, if you recall?

A I would go to New York City, got permission to go to New York and obtain new employment.

Q And that you would obey the law during that three-year period?

A Obviously, yes.

Q So during all the period that you were in New York, about which you testified, you were on probation on that stock charge, is that correct?

A No, Mr. Duke, not all the time. Just from the time that I was placed on probation, which I believe was October 28, 1971.

Q When did you first come to New York after you got into trouble in connection with the stock case?

A In about January 10, 1971.

Q How long were you here before you returned?

A Returned where, sir?

Q To Miami.

A I'm not sure. I came here in January. I believe I had to go down to Miami, I think I was subpoenaed to Miami to appear as a witness for one of the co-defendants on that stock case in -- I don't know the month -- in 1971, some time in May or June or April, May or June, '71.

Q So you were just down there for that subpoena and then you came back to New York and you were there --

A I was in Miami other times also.

Q But you didn't stay in Miami for any length of time; you spent most of your time in New York from January 10, 1971, is that correct?

A Up until March of '72 you mean?

Q Yes.

A Yes, I spent most of my time in New York City.

Q What was the arrangement that your attorney made for you with the prosecutors down in Florida that brought about this guilty plea and this suspended sentence?

A Mr. Duke, I did not speak to the prosecutors, my attorney did, and he told me -- he related to me that I would plead -- I should plead guilty to one count, I believe, of conspiracy, and I would receive a year's probation from the judge, Judge --

Q Eaton?

A -- Eaton, Joe Eaton, federal judge. I was not involved myself in any conversations or any negotiations or arrangements with members of the U. S. Attorney's office. My attorney was.

Q But you know what your attorney did, you know what the arrangements were, do you not?

A Well, he told -- I know what he told me.

Q He told you what you were supposed to get, is that right, one year probation?

A That's what my attorney told me.

Q What were you to give in return?

A To give?

Q Yes. What were you to do or not to do in return for that undertaking on the part of the prosecutor?

A I was to admit that I had part of this stock transaction along with these other people and admit that what I did was wrong; and I was to be given a year's probation because I had a clean record.

Q Mr. Lipsky, weren't you also supposed to defer your guilty plea until after your co-defendants went to trial?

A Well, there was a mistrial, Mr. Duke.

Q I mean the second trial. You were severed after the first trial; is that correct?

A I was severed from the other, I believe it was five, co-defendants. I was severed.

Q Yes, and then you testified that you were subpoenaed down there for a second trial as a witness; is that right, for the one or more of the co-defendants?

A For one of the co-defendnats.

Q And wasn't part of your understanding with the prosecutor's office down there that you would defer your guilty plea until after that trial was completed?

A I asked my attorney what would happen, and he said they will go to trial and if you are going to go to trial

after them. They will go to trial first.

Q Excuse me, butyour understanding with the prosecutor's office was made shortly after the first mistrial in December of 1970, was it not?

A Mr. Duke, the mistrial was in December of 1970, about a week into the trial, or three days into the trial and I didn't get sentenced to probation until October 28, 1971, about ten months later.

Q My question is, your understanding was made approximately ten months before your guilty plea, was it not?

A I cannot tell you that for a fact, sir, because I did not do any of this. My attorney Mr. Gwinn did.

Q What did your attorney tell you? When did he tell you that he had an understanding with the government?

A I don't recall, sir, the exact date that he told me that I would be getting a break or I would get probation rather than a jail term.

Q Was it near the time of the mistrial or near the time -- was it shortly before you were sentenced or long before youwere sentenced?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Mr. Lipsky, wasn't part of your understanding with

the government that you would not plead guilty and that you would not testify on behalf of any of the co-defendants so that your co-conspirator, Mr. Teresa, could testify falsely concerning at least one of the defendants in that case?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Mr. Lipsky, did you know a person named David Iacovetti at the time you testified to the federal grand jury?

A In Miami?

Q Yes.

A Yes, I knew him.

Q Had you personally met him?

A I had.

Q Had you had any transactions with him?

A We had discussions, one or two.

Q Did Mr. Iacovetti introduce you to David -- to Teresa?

MR. LAVIN: Objection, your Honor.

THE COURT: At this time I will sustain the objection, subject to some foundation to indicate that we are talking about matters that relate to this case.

MR. DUKE: I would like to make an offer of proof

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at some appropriate time.

THE COURT: You make your offer of proof by asking proper questions along proper lines.

Q Mr. Lipsky, at the federal grand jury on May 1970, of which you testified on direct that you gave false testimony, did you testify concerning David Iacovetti?

MR. LAVIN: Objection.

THE COURT: I think that we have gone far enough on that subject, Mr. Duke, until you lay the foundation for something that relates to this case.

MR. DUKE: I submit that does, your Honor.

THE COURT: That is your opinion, and my opinion is that you haven't laid a foundation for it in this case yet.

Q Mr. Lipsky, do you still have an understanding with the prosecutor's office in the Southern District of Florida?

A How do you mean?

Q Do you have any pre-arrangements with them?

A I have spoken to Mr. Gary Betz of the Strike Force, who questioned me at that grand jury in May of 1970 to which you refer.

Q Have you undertaken to provide assistance to Mr. Betz?

A Have I?

Q In the future?

A Yes.

A If Mr. Betz has need to ask me anything, I believe my attorney, Mr. Gwinn, who represented me up until not too long ago, told Mr. Betz that if he has any need for me in any matters, that he can talk to me.

Q Is it your expectation that you will be assisting Mr. Betz?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q This murder case, Mr. Lipsky, that you testified to on direct, I take it you were indicted for the crime of murder in March of 1972; is that correct?

A That is correct.

Q Do you know what the maximum penalty for murder is in the State of New York?

A I believe I do.

Q What is it?

A I think it is 25 years to life.

Q You obtained permission of the Court to change your plea of not guilty to guilty to the crime of manslaughter, is that correct?

A Thatis correct.

Q Did you obtain any assistance from the office of the United States Attorney in obtaining the consent of the Court to reduce the charge from murder to manslaughter?

A I personally did not obtain any assistance. What the --

Q Did the --

THE COURT: Would you finish your answer.

A No, sir.

THE COURT: You may finish your answer.

A I personally did not obtain any assistance. Mr. Gwinn who was representing me during that trial also with an attorney Mr. Baumann, had some conversations with the Assistant United States Attorneys here in this --

Q Mr. Lipsky, can you answer my question either yes or no, that is, did you obtain any assistance of the office of the United States Attorney?

THE COURT: He told you that he personally did not.

Q Did the office of the United States Attorney assist you in persuading the judge to reduce the charge from murder to manslaughter?

A Mr. Duke, I don't know that they persuaded the judge to change my plea from -- my charge from --

Q That wasn't the question, Mr. Lipsky. The question was did they assist you. The judge ultimately was persuaded, was he not, he did consent to reduce the charge .

THE COURT: What do you mean by persuaded? By proper means or improper means?

MR. DUKE: I am not attaching any label to it.

THE COURT: I don't understand the word that you are using and I want to be sure as to exactly what your purpose is.

MR. DUKE: Your Honor, it is nothing improper --

THE COURT: Please ask the question with

ordinary English words that don't carry double connotations.

BY MR. DUKE:

Q Did the judge in Nassau County acquiesce in your request to plead guilty to manslaughter rather than standing trial for murder?

Was a motion made in open court to permit you to plead guilty to manslaughter rather than standing trial for murder?

A Yes, Mr. Duke, I believe it was.

Q And the judge granted that motion, is that right?

A Yes, Mr. Duke, he did.

Q Prior to that motion being granted was there any communication, so far as you know, to the court from the office of the United States Attorney for the Southern District of New York concerning that motion?

A I have heard about such communication, Mr. Duke.

Q Were you present when that motion was made in court?

A When the motion for --

Q The motion to change the plea and to reduce the charge was made.

A I was present, Mr. Duke.

Q Did you hear the prosecutor tell the judge about a letter from the United States Attorney for the Southern District of New York?

A I have heard about such a letter, Mr. Duke.

Q You were in court when that letter was reported to the judge, were you not?

A I believe I was there, Mr. Duke.

Q That letter informed the judge that you had been cooperating with the Southern District of New York, did it not?

MR. LAVIN: Objection.

THE COURT: Sustained as to form.

Q Did that letter support your request for reducing the plea.

MR. LAVIN: Objection.

THE COURT: Sustained as to form only.

Q Mr. Lipsky, were you present in court when the prosecutor, Mr. Dillon, informed the court that the letter from the office of the United States Attorney had been submitted and stated in part, and I quote, "Lipsky first started cooperating with our office in March" --

THE COURT: Are you stating now what Mr. Dillon said or are you stating what the letter said?

MR. DUKE: Mr. Dillon said what the letter said.

Q Did you hear Mr. Dillon say that the letter said "Lipsky first started cooperating with our office in March of 1972, shortly after his arrest by Nassau County detectives"? Did you hear Mr. Dillon tell the court that, report that to the court?

A Yes, sir, I believe I heard Mr. Dillon say that to Judge Spitzer.

Q Mr. Lipsky, what is your understanding with respect to the maximum amount of time or the minimum amount of time you must serve on this indeterminate sentence that you received on the manslaughter conviction?

A The minimum amount of time?

Q Yes.

A Well, I am not 100 per cent sure of that, Mr. Duke. From what I have been told by asking people, I have been told that I am eligible for parole by the State of New York Parole Board at such a time as they give me a parole hearing after a certain amount of incarceration. I have not been told this by any member of the Parole Board or anyone from the State of New York in normal form. I have just heard conversation by people.

Q Is it your understanding, Mr. Lipsky, that you could be released at any time?

A That is my general understanding, I could be given a parole by the New York State Parole Board under this indeterminate part of my sentence, as you said.

Q And you expect, do you not, that in the very near future favorable actionwill be taken on your parole?

A Mr. Duke, I have been told nothing by the State of New York Parole Boa4d.

Q The question is do you not expect favorable action very soon.

MR. LAVIN: I think he answered the question the first time.

THE COURT: Let him answer it again. Do you expect it or do you hope it or what?

THE WITNESS: I would hope that -- I would hope that favorable action would be taken, but, Mr. Duke, I have no understanding that such actin will be taken on my part.

Q You would be very surprised, would you not, if such favorable action was not taken.

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Mr. Lipsky, haven't you told somebody very

recently that you expect to be on the street as soon as this trial is over?

A No, Mr. Duke, I didn't tell that to anyone, that I would be on the street as soon as this trial was over.

Q Did you tell anyone that you expected to be on the street as soon as this trial was over?

A Mr. Duke, I think I just answered you.

MR. LAVIN: I would like to know Mr. Duke's basis for that --

THE OURT: Please.

MR. LAVIN: Sorry.

THE COURT: That is out of order.

I believe he has answered the question, Mr. Duke.

Q Did you tell that to your attorney, Mr. Ginn, recently?

A Did I tell --

Q That you expected to be on the street as soon as this trial was over?

A I do not recall at any time using those words to Mr. Ginn.

Q Did you use anything that communicated that general idea as opposed to those specific words?

MR. LAVIN: Objection.

THE COURT: Sustained. I think that is about as far as we can go this afternoon, Mr. Duke.

Ladies and gentlemen, we will now recess until tomorrow morning. I hope all of us, including lawyers -- I am addressing myself to all the lawyers as well as the jurors -- I hope all of us can get here by a few minutes before 10 so that we can start off on time.

Now, bear in mind that we are at that season of the year where we ought not to waste our resources of time. That is all I will say about that subject.

Please keep an open mind on this case. Do not discuss it among yourselves. Don't permit anybody to discuss it wi th you. It is not to be a topic of conversation in the elevators or on the streetcars or on the subways or at home. Just keep your own counsel.

Bear in mind that you, the jury, know what the evidence is in the case and consequently anybody who volunteers any information to you cannot have the same information that ou have about the case and is intruding improperly into your affairs. Until thiscase is over please bear in mind that you are duty bound under your oaths as jurors to protect the integrity of the trial, and

you protect that by not listening to anybody or anything, and if through mischance or otherwise anything should appear or seem to appear in the newspapers or on the television or on the radio shut it off from your mind and from your eyes and have nothing to do with it. Just keep a clear, undiluted, impartial and open view until the case is submitted to you for your deliberation.

I bid you all goodnight.

(Adjourned to December 20, 1973, at 10:00 a.m.)

UNITED STATES OF AMERICA

vs.

BENJAMIN MALLAH, et al.

New York, December 20, 1973,

10:00 a.m.

Trial resumed.

- -

(In open court; jury present.)

C E C I L E M I L E T O resumed.

THE COURT: Mrs. Rosner, come up.

(At the side bar; the court and Mrs. Rosner present.)

THE COURT: This is the second day that you are late. What is your excuse today?

MRS. ROSNER: Just the traffic, Judge. I left in plenty of time and I am really sorry.

THE COURT: Mrs. Rosner, I don't think that you are making a genuine effort to get here on time. You are delaying the court unnecessarily.

MRS. ROSNER: I did, Judge, really. I am terribly sorry.

THE COURT: That is not going to absolve the thing. Being sorry is not the same as being on time.

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This is the second time. If there is a third time I am going to hold you in contempt.

(In open court.)

THE COURT: Mr. La Rossa, come up.

(The Court and Mr. La Rossa conferred at the bench off the record.)

(Pause.)

(In open Court.)

THE COURT: Ladies and gentlemen, the reason for the delay of Mrs. Williams is that, unfortunately, she fell down in front of the building, she was here on time, and she can't get up. The guard is coming up to explain it to me. But she was here.

We will take another minute to find out if she is badly injured or just stunned and then decide what to do.

It shows the need of being careful in the icy streets.

(Pause.)

THE COURT: They are going to have to take Mrs. Williams for medical attention. Under the circumstances, since they will have to take her down to the Beekman Hospital for that medical attention, I think that, with the consent of all counsel, we will install

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an alternate in Mrs. Williams' place.

Is that agreeable to all counsel?

MRS. ROSNER: May we have a moment, your Honor?

THE COURT: Yes.

(Pause.)

MR. DUKE: Your Honor, may we have a side-bar conference?

THE COURT: Yes.

(At the side bar.)

THE COURT: Yes, Mr. Duke?

MR. DUKE: Ordinarily, I would have no objection to installing an alternate, but I am informed by my client that he believes that the first alternate, the lady in the blue dress, saw him with his cuffs on in the elevator today, and I think that would create the possibility of great prejudice if she were installed as a regular juror.

THE COURT: We have had that problem nefore, and there doesn't seem to be any legal ground on that. Mr. Sperling or somebody else in the predecessor trial raised some question on that score, and I think we ought not to split hairs here.

Do you want me to hold this case and try this

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case on Saturdays and Sundays and Christmas Day to get it finished while we send this lady down to the hospital and find out what is the matter with her? I will give that consideration.

MR. DUKE: What I am suggesting, your Honor, is that one of the other alternates be installed.

THE COURT: I can;t take people out of order. I mean you selected them in this fashion, and you each had your right to challenge the alternates, and I don't see that it is appropriate for me to start the selection process of the jury all over again at this stage. You make up your minds what you want to do and I will rule.

(Pause.)

MR. DUKE: Your Honor, my position is that I consent to the excusal of the lady.

THE COURT: Mrs. Williams?

MR. DUKE: Mrs. Williams. But on the ground of the contact that was made with the first alternate I request that one of the other alternates be installed, and that the lady that had the contact be disqualified.

THE COURT: Precisely what do you call contact? What was it? First of all, do you know this of your own knowledge?

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MR. DUKE: No, I don't.

MR. PELUSO: Judge, I can state this. I was on the same elevator. I got on the same elevator and she got on the elevator with me, and Mr. Pacelli and Mr. -- your client -- Mr. Barrett were handcuffed by the wall, and the marshals were outside. This I saw. I got on the elevator with my client.

THE COURT: Yes? What else? Is that everything?

MR. PELUSO: She walked in. It was apparent that they were handcuffed.

THE COURT: Apparent to you?

MR. PELUSO: I think apparent to anyone getting on the elevator the way we had to move about, Judge.

THE COURT: Well, I have just sent for the case authority, that circumstance, even if I were to make inferences that she was as knowledgeable and understanding as you claim under the circumstances, and your inference from it, that has been held heretofore not to constitute any basis whatever for the excusing of a juror.

I will ask the juror to visit with us in the chambers, in the presence of all counsel, and I will question her.

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But as a matter of law, I don't see that that is a disqualification.

On the other hand, I want to give everybody the fullest opportunity to ventilate their knowledge and understanding before I make the ruling.

MR. LA ROOSA: Excuse me for just a moment.

(Pause.)

THE COURT: Are we ready for that procedure?

MR. LA ROOSA: Your Honor, we do not wish the juror examined.

THE COURT: You mean speaking for everybody or for yourself?

MR. DUKE: Speaking for Pacelli, we do not want her examined.

THE COURT: In other words, I am to invest this Mrs. Deitch, who is the next alternate juror in line and swear her as a juror, is that what you are saying?

MR. DUKE: No, my objection stands.

THE COURT: You don't want me to examine her. There is nothing to that. I will examine her.

MR. PELUSO: Judge, I think on behalf of my client I would object to an examination.

THE COURT: You have no basis for objection because I am authorized and in fact it is my duty to find out if there is any conceivable basis for objection to a juror. You can't have it both ways.

MR. MITCHELL: Your Honor, I just found out that my client, Mr. Barrett, was in the elevator. I didn't know that.

mbbr 2

THE COURT: Let us not make a molehill out of a mountain.

MR. MITCHELL: I will take the same position as Mr. Duke simply to protect the record. That is all.

THE COURT: Very good.

I am going to excuse the jury for five minutes, while we work out this legal problem.

Mrs. Deitch, will you just remain? You are the next alternate. Just remain there.

MR. DUKE: Your Honor, on reconsideration, on behalf of Mr. Pacelli I would like to withdraw my objection to the seating of Mrs. Deitch.

THE COURT: Does every defendants' attorney expressly consent on the record to the seating of Mrs. Deitch?

MR. MITCHELL: Yes.

MR. LA ROOSA: Yes.

MR. PELUSO: Yes.

MRS. ROSNER: Yes.

THE COURT: Does the government consent?

MR. LAVIN: The government consents.

(In open court.)

(Jury not present.)

THE COURT: Swear Mrs. Deitch.

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(Mrs. Deitch sworn, alternate No. 1, sworn as a juror.)

THE COURT: Mrs. Deitch, you will be sitting in seat No. 11. I think that is right.

(Jury present.)

THE COURT: Now ladies and gentlemen, so that you will be kept informed, rather than risk any delay through the possible illness, and I hope that she is not ill, of Mrs. Williams, everybody has agreed that Mrs. Deitch should substitute and become a member of the panel.

We will go forward now.

Bring in the witness, please.

C E C I L E M I L E T O, resumed.

THE COURT: Mr. Lavin, you had one question you wanted to ask?

MR.LAVIN: Just a few short questions.

THE COURT: Go ahead.

DIRECT EXAMINATION CONTINUED

BY MR.LAVIN:

Q Mrs. Mileto, you testified yesterday about being down in 5 Spring Street on one occasion when Mr. Mallah was there. Was there another occasion before that time?

A Yes, there was.

Q Would you tell us about that, please?

A My husband and I went to 5 Spring Street, and we walked into Herbie's apartment, and Bennie Mallah and Herbert Sperling and Josephine were there at the time.

Q Did your husband say anything to you as you went in the door?

A Yes, he told me go into the living room.

Should I go on?

Q Yes, please.

A There were quite a few bags of white powder on the kitchen table. Herbie put them into a shopping bag, Bennie said, "Are you going to have enough money for this?"

And we left.

MR. LA ROOSA: I didn't hear the witness.

THE COURT: Would you read it, Mr. Birnbaum?

(Record read.)

Q What happened to the shopping bag, with the bags in it?

A It went into the trunk of our car where we went back to Elmhurst and the car was parked in the garage.

Q Who was driving the car?

A My husband.

Q Louis Mileto?

A Louis Mileto.

Q Did he bring those bags upstairs?

A No, he did not.

Q Did he tell you what was in them?

A No, he did not.

Q Miss Mileto, will you look at the defense table and the people surrounding it and tell us if you recognize any person at that table aside from Mr. Mallah?

A Yes, I do.

Q Would you point him out to the Court and jury, please?

A The man in the brown right behind the table there.

Q What is he wearing?

A A brown suit and a brown shirt.

Q Do you know his name?

A I know his name is Al. They had a nickname for him.

Q Can you tell us where you had seen that individual?

MRS. ROSNER: Your Honor, I am going to object to this line of inquiry and I would like a moment to state my objections in writing or have a side bar conference.

THE COURT: State them in writing.

(Pause.)

THE COURT: Show it to Mr. Lavin.

(Pause.)

MR. LAVIN: May I respond to this on the paper, your Honor?

THE COURT: All right. Just draw a line so that

I know that it is your response.

(Pause.)

THE COURT: Show it to Mrs. Rosner, please.

(Pause.)

THE COURT: You better start on another paper.

MRS. ROSNER: Yes, your Honor.

THE COURT: And don't write a brief to me, just give me a reason.

(Pause.)

THE COURT: This will be marked Court's Exhibit 2.

(Court's Exhibit 2 was marked for identification.)

THE COURT: The objection is overruled.

Go ahead.

MR. LAVIN: Your Honor, may the record reflect that the witness has identified and is referring by her motions to defendant Alfred Catino?

THE COURT: Yes.

BY MR. LAVIN:

Q Can you tell us where you had seen Mr. Catino?

A Ballantine's Barbershop.

Q Can you tell us when that was?

A In the summer of '71.

Q How often did you see him down there?

jhbr 3 Mileto-direct

A Quite a few times.

Q Did you see him with anybody?

A Herbert Sperling, my husband, Sonny Gold.

MRS. ROSNER: Your Honor, I am going to object to this form of testimony unless the witness can give specific details.

THE COURT: The objection is overruled.

Go ahead.

Q Did y ou ever hear your husband Louis Mileto have a conversation with Mr. Catino?

A It wasn't a conversation. They were yelling at him.

Q Who was yelling?

A My husband.

Q How often did your husband speak to Mr. Catino in your presence?

MRS. ROSNER: I am going to object to the leading, your Honor.

THE COURT: Yes. Did your husband have more than one conversation with this man?

THE WITNESS: Yes.

THE COURT: How frequently?

THE WITNESS: A couple of times in my presence.

Q Can you tell us to the best of your recollection

what was said by bother parties?

MR. DUKE: Objection to the hearsay, your Honor.

MRS. ROSNER: Your Honor, may we have a place and date if possible?

THE COURT: Were you within earshot of these conversations?

THE WITNESS: Yes, I was.

THE COURT: And can you place them approximately as to time?

THE WITNESS: What month do you mean?

THE COURT: Yes.

THE WITNESS: No, I can't, your Honor. The summer of '71 is the best.

THE COURT: All right. You may state as best you recall the conversation, that substance of the conversation that you overheard.

A He asked him if he did what he was supposed to.

Q Who asked?

A My husband.

Q Asked who?

MR. CATINO: You never seen me before in your life, you liar. You know you are a liar.

THE COURT: Please, stop that.

MR. CATINO: What do you want to do, your Honor? The same thing is happening in the Sperling case.

MRS. ROSNER: May we withdraw for a moment, your Honor?

THE COURT: Marshal.

MR. CATINO: You put these junky witnesses on the stand.

THE COURT: Marshal, remove that man.

MR. CATINO: The same thing in the Sperling case, your Honor.

THE COURT: Remove that man.

Sit down a minute, Mr. Lavin.

(Pause.)

A VOICE: Your Honor, can't you please try to be fair?

THE COURT: Would you please step out?

THE VOICE: I will.

THE COURT: Please step out.

(Pause.)

MR. CATINO: Your Honor, I would like to apologize to the jury.

THE COURT: Ladies and gentlemen of the jury --

MRS. ROSNER: I am very sorry, your Honor.

THE COURT: -- you are not to hold this outburst,

improper outburst, against this man. He is not on trial for his outburst. You are to take the proof as it comes in from the witness stand. Whatever occurs in the courtroom is not proof of anything either for or against anybody.

Sometimes things occur. They are not to influence you or to make you feel that there is any truth or untruth in what they are. They just are improper. In the orderly presentation of the case you will take everything that comes from the witness stand and nothing that comes from outside the witness stand either for or against anyone.

Please proceed, Mr. Lavin.

Read the last question and answer.

(Record read.)

Q Who did he ask, who did your husband ask, who was he talking to when he said --

A Al.

Q Do you recall any other conversation?

A No.

Q Mrs. Mileto, did you take some pills this morning?

A Yes, I did.

Q What kind of pills were they?

A Nerve pills, Valium.

Q Where did you get the pills?

MR. LA ROOSA: I object to this.

THE COURT: Yes. Sustained.

MR. LAVIN: I have no further questions.

MR. LA ROOSA: May I proceed?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. LA ROOSA:

Q Mrs. Mileto, my name is La Roosa. I represent Benjamin Mallah.

You take pills of one sort or another every day, don't you?

A No, I do not.

Q You don't? Tell us when you first became a hard user of heroin.

A 1969, to the best of my knowledge.

Q Before 1968 you did not use heroin?

A No, I did not.

Q How many years did you use heroin?

A Four years.

Q Was your husband home during those years?

A No, he was in prison.

Q Were you using cocaine during that period as well?

A Once in a while, yes.

Q Were you using barbiturates during that period?

A Yes, I was.

Q Were you using other types of drugs during that period?

A Yes. I used just about every drug during that period.

Q Tell us when this ended.

A All drugs ended?

Q Yes, please.

A Well, I came off methodone in March of this year.

Q Does that mean that is when they ended, Mrs. Mileto?

A That's when I ended hard drugs. I have taken barbiturates since then.

Q As a matter of fact, you take them rather consistently, don't you?

A No, I do not.

Q Just occasionally?

A No, not even occasionally.

Q Tell me, please, will you, and the jury as well, how many times you took any kind of a barbiturate or any kind of a drug from March 1973 until the present day?

A I couldn't possibly tell you that, how many times I took.

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Q You couldn't?

A No.

Q Did you take any yesterday?

A Barbiturates?

Q Any kind of drugs.

A No, no kind of drug whatsoever did I take yesterday.

Q So am I correct, then, Mrs. Mileto, that you did not mainline drugs -- withdraw the question.

What is mainlining drugs, do you know?

A Mainlining? Yes, I know what it is.

Q Tell us what it is.

A It is to inject into your veins directly.

Q And that is what you were doing with the heroin, isn't that right?

A Yes, that is correct.

Q So am I correct then from March 1973 until the present day you injected no drugs into your veins?

A March of '73?

Q That is correct, until today.

A Until today, yes, that is correct.

Q Were you in possession of a hypodermic needle from March 1973 until today?

A Yes.

Q Were you apprehended for it?

A Apprehended for possession of a hypodermic needle?

Q Yes.

A When?

Q This year, from March 1973 until the present day?

A I don't remember.

Q Mrs. Mileto, you do not remember whether you were arrested from March 1973 until the present date for possession of a hypodermic needle?

A No, I do not remember.

Q Do you remember ever being arrested for a hypodermic needle?

A Yes, I do.

Q You have no idea when it was?

A No, I don't.

Q Was it in 1973?

A It may have been.

Q Could it have been in '72?

A Perhaps.

Q When was the first time, Mrs. Mileto, that you gave a statement to a federal agent or testified before a grand jury or did anything to cooperate with the United States Government in any way whatsoever?

A In March of this year.

Q Do you remember the day?

A No, I don't.

Q Was it in the form of testimony before a grand jury?

A I don't know. I just gave information.

Q In March of 1973 tell us how many pending cases you had at that time.

A I believe three.

Q Tell us what they were, please.

A Burglary, drugs, petty larceny.

Q That is all?

A All I can remember. There may have been more.

Q By the way, all the years that you were on heroin, when your husband was away --

A Yes.

Q -- you were committing crimes to support that habit, weren't you?

A Yes, I was.

Q Consistently?

A You are correct.

Q Where were the three charges pending against you in March of 1973? Were they in the State of New York?

A Yes.

Q All three of them?

A Yes.

Q What counties?

A Nassau and the Bronx.

Q How many in Nassau?

A Couple.

Q Do you know whether burglary is a felony?

A Do I know whether it is or it isn't?

Q Yes.

A No, I don't.

Q Did you know what the potential punishment for burglary was?

A No, I did not.

Q No idea?

A No.

Q Did you talk to Mr. Lavin or any other member of the United States Attorney's office about assistance on any of those cases?

A I was told that they would talk to the judge for me.

Q That is the only thing you know about it?

A That is correct.

Q Mrs. Mileto,didn't you accompany Mr. Lavin out to Nassau County and go into court with him?

A Yes, sir.

Q Did you see him talking to the judge?

A No, I didn't see him talking to the judge.

Q You weren't in the courtroom when he spoke to the judge on the day you were sentenced?

A Yes, he did, I am sorry, he did talk to the judge. I was present.

Q Now you recall that?

A Right.

Q Do you know why he was going to talk to the judge?

A For my cooperation.

Q He was going to try and get you out of that charge, wasn't he?

A I hoped so.

Q Did he tell you that's what he was going to try and do?

A No.

Q He didn't tell you that?

A No. I was never told that.

Q But you knew he was in Nassau County to see a judge on your behalf; isn't that right?

A That is correct.

Q When did he go see that judge in Nassau County?

A Few months ago.

Q September

A I couldn't tell you.

Q Could you tell me whether it was some time after July of 1973?

A I believe so. I believe it was.

Q Mrs. Mileto, do you have trouble remembering times of the year?

A I am trying to forget this whole life.

Q Do you have trouble remembering times of the year?

A No, I can remember the year, once in a while the month. I wouldn't say I had trouble.

Q What was the charge in Nassau County that Mr.

Lavin went out and saw the judge about?

A I believe it was a drug charge or it may have been a petty larceny.

Q You mean you don't remember?

A No, I don't.

I had several cases. I don't remember exactly which one he went to talk to the judge about.

Q Did you know Mr --

A Oh, yes, I do, now I do remember. It was for possession of cocaine, the equivalency of an aspirin.

Q Were you charged with attempted sale?

A Yes, I was, and I had a hung jury.

Q Did you testify?

A No, I did not.

Q Did you tell the Court you weren't guilty?

A Yes, I did.

Q And then there came a time when you told that same Court you were guilty, right?

A That is right.

Q That didn't trouble you, did it? To tell the Court that you were not guilty, even though you knew you were guilty?

A Trouble me?

Q Yes.

A I wasn't guilty of that crime.

Q And yet you walked into the courtroom at a time subsequent to that and pleaded guilty to that crime, didn't you?

A I was told that -- don't people plead guilty to crimes to get a certain deal or something with the judges?

Q I am afraid I can't.

A This is what my lawyer told me to do, advised me.

Q And you told your lawyer that you weren't guilty?

A That is right.

Q And notwithstanding that, Mrs. Mileto, he told you to go into court and say youwere?

Is that what happened?

A Thst is right.

Q Youknew when you stood up before that judge in Nassau County and said " I am guilty," it was a lie?

A My lawyer advixed me this was the best thing to do at this time.

Q And Mrs. Mileto, no matter what your lawyer told you to do, even though it was a lie, you were willing to do it; right?

A I had confidence in my lawyer.

Q Do you have confidence in Mr. Lavin?

A I am not on trial here.

Q Do you have confidence in Mr. Lavin?

MR. LAVIN: Objection, your Honor.

THE COURT: Sustained.

Q When did you start receiving money from the government?

A They gave me my life, the government.

Q When did you start receiving money from the government?

A In March.

Q Tell me how much you received?

A $1,080.

Q Was this a negotiated amount or is that what they offered you?

A That's what they gave me for myself and five children.

Q And you have been getting that $1,080 a month since then?

A No, I have not.

Q When did it stop?

A About two months ago, three months ago.

Q Since then you receive nothing?

A Last month they helped me again.

Q What was that?

A With my rent and --

Q Who did you call when you wanted the help last month?

A Stuart Stromfeld,an agent.

Q Mrs. Mileto, did you sell your story to the New York News?

A No, I did not.

Q Didn't receive any money from the News?

A Nothing whatsoever.

Q Tell me how many times, if you know, Mr. Lavin or anyone else from the United States Government went to a judge on your behalf?

A Twice.

Q And on both those occasions, were they successful?

MR. LAVIN: Objection, your Honor, to the form of the question.

THE COURT: Sustained.

Q On both those occasions you didn't go to jail, did you?

A No, I did not.

Q Mrs. Mileto, during the month that you were receiving the thousand eighty dollars a month from the government, tell us, did you commit any crimes during that period of time?

A Yes, I did.

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Q How many times?

A One time.

Q Where was that?

A Do I have to tell him where that was.

THE COURT: Was it in the east, west, north or south?

A It wasn't in New York.

THE COURT: It was not in New York.

Q Whatwas the charge?

A I gave two seconals to a policeman.

Q That was in Louisiana, wasn't it?

MR. LAVIN: Objection.

THE COURT: I think I will sustain the objection. It is of no importance where it was.

Q The occasion when this happened were you arrested by eight policemen?

A Yes, I was.

Q For sale to an undercover officer?

A No, not for a sale?

Q Not for a sale?

A Distribution I believe was the charge.

Q Did you know he was a police officer?

A No, I didn't.

Q You weren't using those pills when you gave them to

him, were you?

A No, I wasn't.

Q Did you have your five children with you then?

A Yes, I did.

THE COURT: Is seconal a sleep pill?

THE WITNESS: It is, it is a barbiturate.

THE COURT: Barbiturate?

THE WITNESS: Right.

THE COURT: That is what you were arrested for, two seconals?

THE WITNESS: That is correct.

Q Did you tell us on direct testimony, Mrs. Mileto, that in 1970, you were convicted of a petty larcency?

A Convicted -- I don't remember if I told you that.

Q You mean you don't remember testifying yesterday to that?

MR. LAVIN: Objection.

THE COURT: Fits there, I said it.

Q Were you arrested in 1970 for petty larceny?

A Yes.

Q Was it the result of an armed robbery?

A Yes, it was.

Q Were you carrying a weapon at that time?

A Yes, I was.

Q When did you commit the burglary?

A I gave -- I didn't actually commit the burglary.

Q How many times have you been charged with drugs, possession of from March 1973 until the presetn day?

A I think four times.

Q This was all during the period when you were receiving a thousand and eight dollars a month, isn't that right?

A No, that is not right.

THE COURT: The lawyer asked you how many times since March '72.

A I am sorry. I misunderstood. One time I was charged.

Q Tell me, Mrs. Mileto, are there periods within the last few years that you really have no recollection of because of drugs?

A Yes, there are a few.

Q In fact, there are times that are just a blur to you at this time as you look back at it, right?

A No. I have had blackouts and passed out, things like that.

Q Many times?

A OD.

Q What does that mean?

A An overdose.

Q You have also attempted to take your life, haven't you?

A Yes, I have.

Q Do you remember once in 1971, Mrs. Mileto, when your husband called you, told you on the phone that two policemen had him?

A Yes.

Q Did he tell you to take $7,000 out of a shoe and bring it to him?

A Yes.

Q Would you like a moment, Mrs. Mileto.

(Pause.)

A Yes, he did tell me that, and I took eight pills and took the money into him.

Q I am sorry.

A And I took eight pills and I took the $7,000 and I took it to Second Avenue in the city.

Q To pay the two policemen?

A That is correct.

Q And in payment for the two policemen, they were going to let your husband go, right?

A That is right.

Q Did you ever tell Mr. Lavin that?

A Yes, I did.

Q Were you ever charged with bribery of a police officer?

A No, I never was.

Q Were you ever charged with any of the things you testified to here in this case?

A No, I wasn't.

Q Mrs. Mileto, that was important to you when you received that call from your husband, wasn't it? Notwithstanding that, you couldn't drive the car into New York City, could you?

A No.

Q Got into many accidents on the way, didn't you?

A No, I did not.

Q Couldn't drive it though, could you?

A I made it there.

Q And then got out of the car and passed out on the street, right?

A Crawled across the street.

Q That's not the only time you couldn't handle yourself becaose of drugs, isn't that right?

A When my husband was on the streets? No, that isn't right

Q How about in the last two or three years.

Q Were there many occasions when you didn't know where you were because of drugs?

A No.

Q Were there occasions where the next morning you didn't know what happened the night before?

A No, since my husband was out of jail are you talking about?

Q I am talking about in the last two years.

A The last two years, no.

Q You have had complete control of yourself in the last two years?

A Yes. Even with the 8 pills in me I had control of myself. I made it there.

Q Crawling?

A Yes, but I knew what I was doing. After taking so much drugs I could function.

Q In other words, your mind functioned properly, but your body couldn't; is that right?

A That is right, I could hardly stand up.

Q You couldn't walk, right?

A Well, once they got me on my feet I walked.

Q Tell me, Mrs. Mileto, how many times have you talked to Mr. Lavin or other Assistant United States Attorneys about the facts that you just testified to here?

A I believe about twice.

Q Just two times?

A About the facts I just testified to here? Yes.

Q When was the first time?

A Yesterday.

Q After you left the stand?

A Yes.

Q How many times prior to yesterday had you talked to Mr. Lavin or other Assistant United States Attorneys?

A Quite a few.

Q Tell me how many, please.

A I couldn't tell you how many. They had me in and out over here.

Q More than 20?

A I don't believe so.

Q More than 10?

A Yes.

Q And on these occasions were you asked questions?

A Yes.

Q Did you give them all the answers you could?

A To the best of my knowledge.

Q And they asked you many times about Benjamin Mallah, didn't they?

A No. Herbert Sperling.

Q How about Benmamin Mallah? How many times did they ask you about him?

A I don't know how many times they asked me about Bennie.

Q Once?

A A few times.

Q Five times?

A Maybe.

Q Maybe more?

A I don't believe so.

Q Did they ask you to tell them everything you knew about Benjamin Mallah?

A They asked me what I knew about Bennie Mallah.

Q Did you testify before a grand jury?

A Yes, I did.

Q Did they ask you what you knew about Bennie Mallah?

A I don't recall if Bennie was even brought into it at that time.

Q Mrs. Mileto, isn't it a fact that up until yesterday afternoon, you never in your life told anyone that you saw Ben Mallah at Mr. Sperling's apartment with white powder on the table, right?

A That is correct.

Q And in every interview that you have had with any Assistant U.S. Attorney, you never saw fit to mention that; isn't that right?

A I wasn't asked that.

Q But you were asked everything you knew about Ben Mallah?

A No.

MR. LAVIN: Objection, your Honor.

THE COURT: Overruled. The witness says no.

Q How many times have you seen Ben Mallah in your life?

A About four.

Q Where were the four?

A Spring Street.

Q All four times?

A I believe he was at a party that was given for the -- one of the Sperling boys, Gus.

Q And you were there?

A Yes, I was.

Q How about the other three times?

A Spring Street.

Q There are two occasions you told us you saw Mr. Mallah on Spring Street, right?

A Yes,that is correct.

Q When were these two occasions you told us about?

A Would you like a date?

Q When I say when, I assume that's what I want. Yes.

A I couldn't give you a date. I don't know.

Q How about a year?

A It was in the year of '71.

Q When in '71?

A Once was justbefore Christmas.

Q Is that the time you said you saw Sperling counting the money?

A Yes, that's the time.

Q When was the other time, Mrs. Mileto?

A It wasin the summe of '71.

Q Summer of '71?

A Yes.

Q When in the summer?

A I couldn't give you a month.

Q Who were you with?

A My husband.

Q Both times?

A Yes, I was always with my husband.

Q Let us talk about the summer of '71, the time that you said that you walked into Mr. Sperling's apartment,

saw Mr. Mallah there. Tell me if I am stating this correctly:

You saw white powder on the kitchen table. Was it packaged?

A Yes, it was.

Q Just piled up on the table?

A It wasn't piled up.

Q How many packages? A lot of them?

A Eight, ten.

Q And you saw Mr. Mallah where?

A Standing at the kitchen table.

Q And you heard Sperling say what? Tell us again.

A I heard Sperling say nothing.

Q Say nothing? Did you hear Mallah say anything?

A Yes.

Q What?

A There was -- if he had enough money for that.

Q Who did he say that to?

A He said it to Herbie.

Q You remember those words clearly, don't you?

A Maybe those weren't the exact words but it was about money. Did he have enough or was -- Bennie is a very soft-spoken man.

Q Tell me what you heard him say, Mrs. Mileto?

MR. LAVIN: Objection.

THE COURT: You may state to the best of your recollection the substance of what you recall.

A To the best of my recollection, "Do you have enough money?"

Q Is that the end of it?

A Yes.

Q Anything else?

A No.

Q Do you have any open criminal cases right now as you sit there?

A Yes.

Q How many?

A Two.

Q Do you expect that Mr. Lavin is going to help you out with those?

A I hope they will.

Q Is there any question in your mind that he will?

A Yes, there is.

Q Have you asked him?

A I asked yesterday, yes, I did.

Q And he didn't tell you yes or no?

A They said that -- I asked an agent. I didn't ask

Mr. Lavin.

Q What was the drug you took this morning?

A It's a nerve -- I can't remember the name of it right now. Valium.

Q Is that all you took?

A That's all I took.

Q Are there any narcotic drugs with you right now?

A No, there are not.

Q Are there any where you are living?

A No, there are not.

Q I assume that now you have no interest in taking narcotics of any kind?

A I take pills for my nerves, which I am under doctor's care for.

Q Other than that?

A None.

Q In other words, as you sit there now, you are completely cured of all these drug problems that you have had?

A I have no habit.

Q In other words, you just voluntarily took these drugs that you referred to without a habit?

THE COURT: Are you talking about the Valium?

Q No. I am not talking about the Valium.

THE COURT: She said she took Valium, that is what she said.

MR. LA ROOSA: I am now talking about the Valium.

THE COURT: You are not considering Valium a narcotic drug, are you?

Q I am excluding Valium. All the drugs that you told us about thatyou took over the years, you did so without a habit?

A No, I didn't say that. I did have a habit, a very bad habit at one time.

Q How many bags a day did it grow to?

A $85 a day.

Q And you had to earn that $85 every day by illegal means, is that right?

A Yes.

Q Have you used any of the $1,080 a month that you get from the government for drugs?

A No.

MR. LAVIN: Objection to the form of the question.

THE COURT: Overruled.

Q Your answer, please.

A No, I have not.

Q Have you received any moneys in addition to the

$1,080 a month, Mrs. Mileto?

MR. LAVIN: I object to the form of the question.

THE COURT: Sustained.

Q Have you received any moneys from the government in any form whatsoever other than $1,080 a month?

MR. LAVIN: I object again to the form of the question.

THE COURT: Well, Mr. La Roosa, she testified that she got less than that for a couple of months. Now you are not referring to that, are you?

MR. LA ROOSA: I am asking her if she ever got more than that, sir.

THE COURT: All right.

MR. LA ROOSA: I know one month she said she got none and one month less than that.

Q I am asking in addition to that $1,080 which was the maximum that you told us you received in any one month, have you received any additional moneys?

THE COURT: She didn't say she received it as a maximum. She said she got paid $1,080. Now the lawyer wants to know, in the months when you got $1,080, was there any additional amount that you received?

A Yes.

Q Tell us about that, please.

A Drug enforcement a couple of times has given me money.

Q How much?

A When I wasn't getting paid by the United States Marshals, they gave me a few hundred.

Q How many times?

A I believe twice.

Q What was themaximum amount those two times?

A Once it was $400 and I don't remember what the next amount was. It wasn't more than four.

Q Has the government paid any of your bills of any kind?

A No.

Q No doctor bills?

A My moving expenses, yes, they did.

Q They paid that?

A Yes.

Q Anything else?

A Doctor bills and things you said? No.

Q Nothing like that. So the only moneys that the United States Government expended in addition to what they gave you was for moving expenses?

A They paid the moving, yes.

Q Did they pick up any hospital bills foryou?

A No.

Q Have you talked to any agents in addition to Mr. Lavin about what they are going to do for you on the open matters that you have?

THE COURT: Mr. Lavin is not an agent.

MR. LA ROSSA: I am sorry. I didn't mean to suggest he was.

Q Have you talked to any agents of the Bureau of Narcotics about what they were going to do for you on those open matters?

A I asked Stuart Stromfeld about my case pending yesterday.

Q Letme ask you this: When you were arrested for those Seconal pills --

A Yes.

Q -- that wasn't in New York, right?

A That's right.

Q Did you have somebody call Mr. Stromfeld while you were in custody?

A Mr. Stromfeld was down there when I was in custody.

Q Did he come, Mrs. Mileto, and get you out of custody?

A I was bailed out the next day. Not by Mr. Stromfeld, but by the United States marshals.

Q In other words, the United States marshals paid the bail for you?

A I don't know if they put up the money exactly or they sign a paper, how they do it, but I was bailed out.

Q You know it wasn't your money, right, Mrs. Mileto?

A What money?

Q That was used for the bail.

A I don't have any money.

Q So you knew it was government funds of one

sort or another that paid for your bail?

A Yes.

THE COURT: If any.

Q Do you know whether there was any bail?

A Yes, there was a bail.

Q How much was the bail?

A $10,000.

Q Mrs. Mileto, you do feel that you have to testify here, don't you?

A Yes, I do.

Q You have no choice, right?

A No, that's not the reason.

Q You mean you don't owe the United States Government anything, do you?

A Nothing.

Q And that's not the reason you are testifying?

A That's not the reason.

MR. LA ROSSA: Thank you, Mrs. Mileto.

THE COURT: Any redirect?

MRS. ROSNER: I am sorry, your Honor. I have a few questions.

THE COURT: I thought you waived examination.

MRS. ROSNER: Excuse me, Judge?

THE COURT: I say I thought you waived

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examination yesterday.

MRS.ROSNER: I waived examination before she testified against my client as she did this morning, your Honor. I would like an opportunity to cross examine her.

THE COURT: You may have it.

MRS. ROSNER: Thank you.

THE COURT: I don't like your attitude either.

MRS. ROSNER: I am sorry, your Honor.

THE COURT: I am sorry that you are sorry. Please correct it.

MRS.ROSNER: I apologize to the court. I am sorry.

CROSS EXAMINATION

BY MRS. ROSNER:

Q Mrs. Mileto, this is not the first occasion when you have testified in court, isn't that correct?

A That's correct.

Q You testified in court, did you not, during July of 1973?

A Yes, I did.

Q In this very courthouse?

A Yes.

Q It may be the noise in the background, but I am having a little trouble hearing you.

A Yes, I did.

Q When for the first time did you begin cooperating with the United States Government, if you can give us a month and a year?

A March of this year.

Q Since March and including the present date, on approximately how many occasions have you been interviewed by anyone connected with the federal government, an agent or assistant United States attorney or any person of that type?

A Fifteen, 20 times.

Q And on each of those occasions the subject of the interview has been, has it not, what you know about persons who may be involved in narcotics activities, isn't that right?

A That's correct.

Q And when you made your decision to cooperate with the government you did so with the frame of mind to help yourself with your own problems, isn't that right, or at least that was one of your considerations?

A That was one of my considerations, yes.

Q And in your own mind you knew, did you not,

that cooperation meant telling the government everything that you might know that could be of assistance to them?

MR. LAVIN: Objection to the form of the question.

THE COURT: Sustained.

Q You believed, did you not, that you should tell the government everything that you knew that could be of assistance to them?

MR. LAVIN: Objection to the form of the question only.

THE COURT: Is that what you believed?

Q Was that your frame of mind?

A Yes.

Q It was. And frequently when you spoke to the agents you would describe a persno whom you knew perhaps only by a nickname, that is, you wouldn't know the man's given name and last name, isn't that right?

A Yes, that's correct.

Q You would describe the name that you had heard used in the street with reference to a certain person, correct?

A Correct.

Q And on those occasions when you did not know an individual's full name the agents would show you

a selection of photographs to aid you in picking out the person you were speaking of, isn't that right?

A Yes.

Q And this happened on more than one occasion, isn't that right?

A That's right.

Q On how many occasions, as best you can recollect now, did that occur?

Do you understand my question?

A Yes, I do. Quite a few.

Q Try to give the jury your best recollection as to a number. You have told us that in total you were interviewed perhaps 20 times, right?

A Right.

Q Of those 20, on how many occasions were you shown photographs to enable you to identify persons you were speaking about?

A Three times.

Q In total, how many persons did you identify by photograph?

A I couldn't tell you how many.

Q You have no recollection?

A No, Quite a few.

Q Quite a few people?

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A Yes.

Q In the 20 or so occasions that you spoke to some agent or some assistant United States attorney you made every effort, did you not, to exhaust your recollection and tell them everything you could remember about people that you believed were involved in narcotics activities, isn't that right?

A That's right.

Q Did you ever on any occasion prior to yesterday afternoon after you left the stand relate to anyone ever anywhere the conversation you have just described between Mr. Catino and your husband?

A No.

Q Never?

A Never.

Q On the 20 or so occasions when you spoke to agents you are telling the jury, I take it, that that conversation never flashed through your mind?

MR. LAVIN: Asked and answered, your Honor.

THE COURT: It is repetitious, but it may be answered.

A No, it never did, until I saw the person.

Q By the way, you have only reported to us here

today a portion of one conversation which you say you recollect, isn't that right?

A That's right.

Q But you testified to the jury, did you not, that you saw this man on many occasions in the Ballantine Barbershop, isn't that right?

A That's right.

Q So we do not have a situation where you saw him on only one occasion --

A Right.

Q -- prior to testifying, isn't that right?

A That's right.

Q You say you saw him many times?

A Correct.

Q The 20 times that you say you were interviewed by some agent of the federal government, can you tell the jury over what period of time, from March until what day, if you recollect, or what month, what period of time was encompassed by those 20 interviews?

A I don't understand the question.

Q I am sorry. I will put it again.

THE COURT: She wants to know starting with the first interview when was the last one in time.

THE WITNESS: Oh.

A Yesterday.

Q After each such interview isn't it a fact that you would go home and think about what you had said, try to recollect whether there was anything you had left out or anything you might want to change about what you had said? Isn't that right?

A No, that's not right.

Q Didn't you go home and try to refresh your own recollection about what it was you were telling the agents in this on-going process?

A No. When I --

Q You didn't think about it when you left them?

A When I leave this courtroom I try and forget everything. I did not want to even testify in this case.

Q So during the times that you were being interviewed by the agents it is your testimony that apart from the times you were actually speaking to them, you never thought about what you were going to say to them?

A I never thought about it?

Q Thought about it.

A When I was talking to them, yes.

Q No, when you weren't speaking to them.

A No.

Q There was a period between March and July of 1973, was there not, when you were being prepared to be a witness by the agents, isn't that right?

A That's right.

Q And I take it it is your testimony that apart from the times that you were actually being interviewed you gave no thought to what you were telling them?

A While I was being interviewed I gave all the thought I could.

Q And when you weren't being interviewed you never thought about it?

A I tried to put it all out of my mind.

Q You never tried to think of other details to add to your story?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q When you took the stand this morning, Mrs. Mileto, you testified in substance -- correct me if I am wrong -- that you had seen Mr. Catino on some occasions during the summer of 1971 at Ballantine's Barbershop, that's correct, isn't it?

A Yes, it is.

Q And you said, the first time you testified about

it this morning you said, did you not, that your husband had had several conversations or some conversations with that gentleman, isn't that right?

A That's correct.

Q And then Mr. Catino had said something in the courtroom, isn't that right?

A Yes.

Q And when he returned to the courtroom and you resumed your testimony you told the jury you recollected only one conversation with your husband, isn't that right?

A I was not -- I couldn't hear the other conversation. I sat in the car a lot of times in front of Ballantine's Barbershop when my husband had several business dealings with quite a few of the defendants.

MRS. ROSNER: I move to strike the characterization, your Honor.

MR. MITCHELL: Your Honor, I am going to object to that unless she specifies.

THE COURT: We will leave it she sat in the car on a number of occasions and strike out the rest.

MRS. ROSNER: Thank you, your Honor.

BY MRS. ROSNER:

Q It's a fact, is it not, Mrs. Mileto, that when

we returned to the courtroom and you testified to what you recollected you reported to the jury one conversation which you overheard? That's a fact, is it not?

A That's a fact.

Q And it is a fact that you reported only what you heard your husband say or direct in Mr. Catino's direction, isn't that right?

A That's right.

Q One isolated sentence or phrase, isn't that right?

A That's right.

Q That's all you recollect?

MR. LAVIN: Objection, your Honor. I wish she would let her finish the answers.

THE COURT: Yes. This is getting a little too repetitious. We have had enough of it.

Q You told the jury exactly what you recollected or heard, isn't that right?

THE COURT: That's enough. We won't go into that any further. She has told you what the facts were.

MRS. ROSNER: I don't believe that question was answered, respectfully, your Honor.

THE COURT: I beg your pardon. Please

go on to the next question.

Q It's a fact, is it not, Mrs. Mileto, that when Mr. Cartino returned to the courtroom you were simply too embarrassed to fabricate any more than that one isolated sentence, isn't that correct?

A No, that is not right.

MRS. ROSNER: I have no other questions.

THE COURT: Anything else?

MR. LAVIN: Just a few questions, your Honor, if I may.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. LAVIN:

Q Mrs. Mileto, you testified that you were receiving $1080 a month from the government in March, 1973. When was that terminated, that money?

A About three months ago.

Q Were you receiving $1080 every month from March to --

A No, I was not.

Q How much were you receiving in the beginning, if you recall?

A About $300, $400.

Q How long were you receiving the $1000, for how

many months were you receiving $1000?

A About three.

Q Were you in protective custody at that time?

A Yes, I was.

MR. LA ROSSA: Objection.

MR. DUKE: Objection.

THE COURT: The objection is overruled.

Q Did you have to pay for your rent out of that money?

A Yes, I did.

Q How much was your rent?

A $400 a month.

Q And did you have to pay for food out of that?

A Yes.

Q You were not working at that time, were you?

A No, I was not.

Q Was anybody supporting you at that time?

A No, one.

Q You testified you received $400 from the Drug Enforcement Administration. When was that, if you recall?

A I believe that was before the United States marshals took over my funding.

Q You also testified you received $200 from the

Drug Enforcement Administration. Do you recall when that was?

A No, I don't.

Q Prior to your appearance in court here yesterday when was the last time you saw Mr. Catino?

A Who is Mr. Catino?

Q The person you know as Al.

A Oh. The summer of '71.

Q You hadn't seen him since then?

A No.

MR. LAVIN: I have no further questions.

MR. LA ROSSA: May I just ask a question or two, please?

THE COURT: Yes.

MR. LA ROSSA: May I do it from my place?

THE COURT: Yes.

RECROSS EXAMINATION

BY MR. LA ROSSA:

Q How many days have you worked at any occupation from today until 1970, until January 1, 1970?

A January 1st of 1970?

Q Until today how many days have you worked --

A I have been working for the last three months steady.

Q That covers the entire period?

A Yes.

Q You didn't work from March until September?

A March of this year? No, I did not.

Q You didn't work from January until March?

A No, I did not.

Q Of this year?

A January? No.

Q You didn't work at all in 1972?

A No.

Q You didn't work at all in 1971?

A I had a husband then.

Q Was your husband in jail that year?

A What year?

Q 1971.

A No, he was home, in the street.

Q How about 1970, Mrs. Mileto?

THE COURT: I think you are going beyond the redirect now.

MR. LA ROSSA: I have no further questions.

THE COURT: Thank you. You are excused.

THE COURT: Ladies and gentlemen, we have had a long morning session so I am going to give you a short recess at this time.

(The jury left the courtroom.)

MR. LA ROSSA: Mr. Lavin, Mr. Mallah is presently willing to stipulate that in my absence today Mr. Freyberg will sit for me, with me, naturally, reserving the right of cross examination of Mr. Lipsky.

THE COURT: That is not the understanding I have. The understanding I have is that you are on trial here, Mr. La Rossa, and I accommodated you with respect to this particular witness because you requested it I believe on Monday and then again on Tuesday. We tried to work out your conflicting engagements.

I have no objection to leaving your turn of cross examination of Mr. Lipsky to last instead of first. That is the extent to which I will leave it. I am not going to hold the witness on the stand while you are occupying yourself in other courts.

MR. LA ROSSA: Your Honor will note that I am not going to any other courts other than a prior trial that I was engaged in.

THE COURT: I know that your intentions are of the best, but I don't want any unnecessary delays here. If everybody on the defendants' side happens to waive cross examination of Mr. Lipsky and

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you are not here I am not going to hold this trial up. If they are going to cross examine then you estimate the practical realities on your own.

DEFENDANT MALLAH: I agree that Mr. La Rossa can leave.

MR. LAVIN: And Mr. Freyberg can sit in.

MR. HALLAH: Yes.

(Recess.)

(In open court; jury present.)

B A R R Y L I P S K Y, resumed.

CROSS EXAMINATION

BY MR. DUKE:

Q Mr. Lipsky, you are presently incarcerated, are you not? You are in custody?

A That is correct, Mr. Duke.

Q Is it federal or state custody?

A I am in federal custody, Mr. Duke, though I am serving my state time.

Q And you have been incarcerated since March 2, 1972?

A That is correct, Mr. Duke.

Q You have had no conversations with Mr. Pacelli since March 2, 1972, have you?

A No conversations with him?

Q Yes.

A Prior to March 2, 1972.

Q The question is since March 2, 1972, have you had any conversations with Mr. Pacelli?

A Actually speaking right to him?

Q Yes.

A No, sir.

Q You haven't had any narcotics transactions with

him since then, have you?

A No, sir.

Q Mr. Lipsky, in your present custodial situation, do you have free use of a telephone?

A Regulated use of the telephone, Mr. Duke.

Q Can you call anyone you want to call?

A No, Mr. Duke.

Q What are the restrictions on your telephone calls?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Have you made a number of long-distance phone calls in the last six months?

A Yes, Mr. Duke.

Q Have you called a Nancy Miller in Miami?

MR. LAVIN: Objection, your Honor.

THE COURT: Overruled.

A Yes, Mr. Duke.

Q Have you called a man named -- named Monk in Atlanta?

A Not in Atlanta, Mr. Duke.

Q Have you called him long distance?

A Who, Mr. Duke?

Q Monk.

A Yes.

Q A friend of yours in this case named Monk?

A That is correct.

Q Have you called a Larry Chason?

A Yes.

Q Do you know how to spell his last name, Mr. Lipsky?

A I do.

Q Would you tell the reporter how to spell it?

A C-h-a-s-o-n.

Q And Mark Sevetsky?

MR. LAVIN: I will object to this line of questioning.

THE COURT: Overruled.

A That is correct.

Q S-e-v-e-t-s-k-y?

A Yes.

Q Did you call your attorney, Mr. Walter Gwinn in the last six months?

A My attorney that represents me at this moment is Mr. Bauman.

Q The question is did you call Mr. Walter Gwinn in the last six months?

A I believe I have called Mr. Gwinn within the last month or two, yes.

Q Did you call him last night?

A I did not.

Q You have been visited by Mr. Garry Betts since your incarceration on two occasions, is that correct?

A My original incarceration?

Q Yes. Since March 2, 1972, Mr. Gary Betts has visited you twice, has he not?

A That's incorrect, Mr. Duke.

Q How many times has he visited you?

A One time, Mr. Duke.

Q Have you written any letters to Mr. Betts?

A Not to Mr. Betts, Mr. Duke.

Q Have you written any letters to anyone in the prosecutor's office in the Southern District of Florida?

A I have not, Mr. Duke.

Q When Mr. Betts came to see you, did he take any notes of his conversation with you?

A I believe he and the other men may have taken notes of the conversation we had. I don't recall if they did or not.

Q Who else was with Mr. Betts?

A Two men from the Internal Revenue Service; inspectors.

Q When was that visit?

A I believe it was in December -- a year ago this month, last December some time.

Q And you believe that one or both of the Internal Revenue agents took notes of your conversation?

A All three of the men may have taken notes. I don't recall exactly who did or who didn't.

THE COURT: Well now, we are not interested in any speculations or what may have happened. If you saw it, please report it. If you didn't see, please report it. If you don't remember, please report that.

A I don't recall, as I just said, Mr. Duke, I don't recall who took notes.

Q Do you recall that one -- that somebody took notes?

A Someone may have. I don't recall.

Q What is your best recollection, Mr. Lipsky?

A I think someone took notes.

Q Do you remember the agents' names?

A The Internal Revenue people?

Q Yes.

A No, I don't.

Q Do you know what office they were working out of?

A Internal Revenue Service.

Q Was it in Florida or New York?

A I think it was Miami.

Q You have talked to Mr. Lavin about this case, haven't you?

A About thiscase?

Q Yes.

A Yes.

Q What other Assistant United States Attorneys in the Southern District of New York have you discussed the facts that you testified about ?

A The facts that I testified about --

Q On direct.

A Yesterday?

Q Yes. What other Assistant United States Attorneys have you discussed those facts with?

A Mr. Velie, and some others.

Q Do you recall the names of any of the others?

A I testified here yesterday to quite a lot of information. I think I spoke to Mr. John Gross, I think I spoke to Mr. Feffer, and Mr. Mc Donald.

Q Did any of these gentlemen take any notes at any time that you were discussing these facts with them?

A They may have; Mr. Duke.

Q Do you recall whether or not they did?

A I think Mr. Velie took notes when I was talking

with him.

Q Did Mr. Lavin ever take any notes when you were talking with him?

A I believe he did.

Q Your best recollection is that he did?

A Yes.

Q Have you ever written any letters to any members of the staff of the United States Attorney's Office in the Southern District of New York?

A Yes.

Q To whom did you write those letters?

A One letter, Mr. Duke.

Q Just one letter?

A That is correct.

Q Who was that letter addressed to?

A Mr. Morvillo.

Q Was that on December 22, 1972?

A I believe you are correct.

Q Is that the only letter that you have written to any member of the staff of the United States Attorney from March 2, 1972 to date?

A I may have written another letter at a previous time than the one you just spoke about to Mr. Feffer, but I don't recall for sure if I did or not.

Q What is your best recollection? Is it that you wrote such a letter to Mr. Feffer or that you did not?

A I believe I did, as I best can recall now.

Q What is your best recollection of the approximate date that you wrote that letter to Mr. Feffer?

A Some time before the letter to Mr. Morvillo that you just spoke of.

Q Approximately how long before?

A I don't recall exactly. Some months before, I think.

Q Less than six months?

A I can't be sure, Mr. Duke.

Q Did you mail it to him?

A Did I personally mail it to him?

Q Or cause it to be mailed to him?

A I was in jail.

Q Did you cause it to be mailed to him?

A I gave it to the proper people who handled the mail.

Q And directed them or requested that they mail it?

A That is correct.

Q Have you ever discussed that letter with Mr. Feffer, any of the contents of that letter?

A I believe we had a slight discussion about it one

day.

Q But he acknowledged having received the letter?

A I think he did one time, and then -- or else he didn't recall it. I once asked him about it and he sort of remembered it but not definitely.

Q Do you recall when you had that conversation with Mr. Feffer?

A No, not exactly, Mr. Duke.

Q Approximately.

A Some time after I wrote him the letter.

Q Was that in 1972?

A I believe so.

Q The last half of 1972?

A Yes, I think so.

Q What federal agents, if any, have you discussed the facts that you testified to on direct with? What federal agents have you discussed those facts with during the last six months?

A During the last six months would be since June?

Q Yes; since June, since June 1, 1973.

A On a number of agents.

Q Could you supply some names?

A Yes. Agent Clark.

Q Robert Clark?

A That is correct. Agent Stromfeld, Agent Turek; and Joseph Laurie.

Q Could you fix the approximate date of those conversations?

A It is in the last six months, Mr. Duke.

Q Did you have more than one conversation with each of those agents that you mentioned, or just one?

A There were more than -- I believe there were more than one with each of these people.

Q Have any of these conversations occurred within the last month?

A Yes.

Q Did any of them occur last night?

A Last night you mean?

Q After you left the stand here yesterday.

A You mean did I discuss anything that I said on direct with any of these agents I just named after I left the stand?

Q Yes.

A No, sir.

Q Did you discuss your testimony with any of these agents?

A I did not.

Q With any agents?

A With no agents.

Q Did you discuss your testimony with anyone since you left the stand yesterday?

A I talked to the deputies that accompany me, and I don't recall if I discussed it with anyone else. I don't believe I discussed my testimony with anyone.

Q You didn't discuss it with Mr. Lavin?

A Discuss my actual testimony in here yesterday?

Q Or this case.

A Since I left this chair yesterday?

Q Yes.

A I did not.

Q These four agents that you testified you talked to in the last six months, did any of them take notes when you were talking to them?

A They may have taken notes or they sat in and listened while Mr. Lavin may have taken notes.

Q Was Mr. Lavin present when you had your conversations with these four agents?

A At some times he was present, and some times I was in the offices of the agents.

Q Do you recall Mr. Lavin taking any notes during any of these occasions?

A I just answered that question for you before,

Mr. Duke.

Q The answer was unclear to me. Do you recall it?

A Mr. Lavin I believe has taken notes within the last month. I think that was the question you asked me.

Q Or within the last six months?

A That is correct.

Q Do you recall any of these agents taking notes during your conversations with them in the past six months?

A They may have. They probably did. I can't really exactly who took notes and when they took them and --

Q Before we get to that, do you recall that one or more of these agents did take notes?

A I think an agent occasionally took some notes on things, questions they were asking me about this case around other matters.

Q That is your best recollection?

A That's true.

Q But I take it your testimony is that you are unable to recall at this point which of the four agents took notes?

A That's true.

Q Mr. Lipsky, have you taken any drugs since March 2, 1972?

A Yes.

Q What drugs have you taken?

A When I was in jail, in the Nassau County jail, I ha a prescription for a week or two for some Valium. My nerves -- for tranquilizers to enable me to rest.

Q Anything else?

A No, Valium was -- let me see -- I took some dispensed drugs in the jail when I had a bad cold one time and the doctor gave me some pills. I don't know what they call them, green pills for a cold.

Q Anything else?

A Nothing I can recall.

Q I am sorry.

A Nothing I can recall.

Q When was the last time you took this Valium that you mentioned getting in the Nassau County jail?

A Oh, a few days ago.

Q That is left over from the supply you got?

A No, I have -- I had gotten a prescription, it was gotten for me by the marshal's service -- by the marshal's service within the last four -- three or four months for the same purpose, for my nerves.

Q Have youtaken Valium regularly since March 2, 1972?

A No, not regularly since March 2, 1972. I only took it, the Valium, when it was given to me in the jail, and then when I was removed from the jail I did not get a prescription for the Valium until the marshal's service obtained it for me and it was dispensed to me. After that whenever I felt I wanted one --

Q That was, as I understand it, three or four months ago that the marshals got this prescription for you?

A I believe so.

Q How often since that period have you taken Valium?

A There was a period there where it was very tense and very --

Q How many times, Mr. Lipsky?

A Well, sometimes I would take one pill three times a day, for a little while.

Q How many days during this three or four-month period did you take Valium?

A Maybe -- every day or every other day for maybe three or four weeks or so.

Q And your testimony is that the last Valium

you took was two days ago?

A A few days ago.

Q A few days ago?

A Yes, few days ago.

Q Have you consulted any psychiatrist since March 2, 1972?

A Have I personally consulted any psychiatrists?

Q Yes.

A No, I have not.

Q Have you received any money from the United States Government directly or indirectly since that date?

A Since March --

Q March 2, 1972, the day you were arrested.

A I received no money from the federal government from March 2, 1972 up until February 23, 1973 when I was removed from the Nassau County jail by the federal government. I received no money in that period of tim e.

Q And after February 23rd?

A I was removed from the Nassau County jail bythe Justice Department.

Q And you received money from that date?

A I didn't receive money. Money wasn't handed to me. I was placed in the federal witness security program whereby my account is given, at that time, $6

a day, which was then increased to $8 a day, not just for me, but for other people who were in similar circumstances.

Q In other words, if I understand it correctly, you have received $6 or $8 a day of credit, is that correct, since February of 1973?

A February 21st of '73.

Q Have you ever received more than $8 a day credit?

A Any more in one day?

Q Any larger sum than $8 per day?

A I have been given witness fees by the United States -- assistant United States attorneys for coming to testify in trials and pretrial conversations.

Q How much per day? That is paid on a per-day basis, is it not?

A I believe it is.

Q How much si that?

A I believe it is $20 a day.

Q Have you received any other money, other than these witness fees and the $6 to $8 per day?

A From the federal government?

Q Yes.

A Other than the witness fees?

Q And the amount that you testified has been credited to your account?

A And the money I get from the federal witness security program?

Q The money that you said amounted $6 or $8 per day.

A You mean any other money?

Q Yes.

A No, sir.

Q Mr. Lipsky, did you file a federal income tax return for 1972?

A I don't believe I did.

Q Did you file a federal income tax return for 1971?

A I can't recall exactly if I filed one in 1971. I may have.

Q Did you report and pay income tax on the money that you claim you made in narcotics during 1971?

A No.

Q Did you report and pay income tax on the money you claim you made in narcotics in 1972?

A No.

Q Did you file a federal income tax return for 1970?

A I think I did.

Q You received some moneys from the stolen stock transaction in Florida, did you not?

A That's correct.

Q How much did you receive on that deal?

A $6000.

Q Was that in 1969 or 1970?

A It was either in 1969 or 1970. I think it was in '69. I'm not sure.

Q Did you report and pay income tax on that $6000?

A You mean did I report it as being the money I made on a stock deal and --

Q Did you report it as income, however you described it?

A I did not.

Q You didn't pay anything, did you?

A No, sir.

Q You have told this to the government, haven't you?

A Told what to the government, sir?

Q That you made this $6000 on the stolen stock and did not report it in your income tax.

A I don't recall if I was ever asked that question. I don't know if I was ever asked the question

that you just asked me, whether I ever reported that $6000 on an income tax form.

Q There is no doubt in your mind, is there, Mr. Lipsky, that the government knows you did not report and pay income tax on that $6000, is there?

MR. LAVIN: I object to the form of the question.

THE COURT: What the government knows can't be proved through this witness unless this witness says he told them.

Q Do I understand you to say you don't recall if you filed a 1972 income tax return?

A I have been in jail in all of -- most all of 1972, Mr. Duke. I don't think -- no one ever came up to me with a form and said, "Fill out an income tax form."

Q So your best recollection is you didn't file such an income tax return?

A That's how I answered your qeustion before, Mr. Duke.

Q You have no intention of filing such a return, do you?

A I don't know much about income tax, Mr. Duke, but I am a prisoner and I didn't earn any money. I wasn't working at any job in 1972, and --

Q You know, don't you, Mr. Lipsky, that illegally obtained income is taxable income, you know that,don't you?

MR. LAVIN: Objection.

THE COURT: I think I will sustain the objection.

Q From the date of your arrest, Mr. Lipsky, on March 2, 1972, to date has anybody in the United States Government ever suggested to you that you owe the government any money?

A Anyone in the United States Government anywhere?

Q Yes.

A Yes, I received a letter from my attorney last December, 1972. In the letter was a copy of a letter from the Internal Revenue Service to that effec, that they said I owed the government some money.

Q What did they say you owed them?

A I believe it was $44,000.

Q What did you do about that communication?

A I wrote a letter to my attorney, Mr. Gwinn -- let me see. I believe I wrote a letter to Mr. Gwinn, wrote him a long, involved letter about what the $44,000 -- where it supposedly came from, involving some

other people, and pursuant to that letter that I wrote to my attorney, he asked me if I would speak to this Mr. Betz from the Organized Crime Strike Force in Miami and two other men.

Q Your attorney, Mr. Gwinn, asked you to speak to Mr. Betz?

A He asked me if I would speak to them about this matter, which I wrote -- which was the $44,000 that the government, the Internal Revenue Service, said I owed them.

Q You got this letter in December of '72?

A Either in November or December of '72, I believe, Mr. Duke.

Q For what year did the letter claim you owed the government money?

A I'm not sure, Mr. Duke. I think it was '69 or '70 or '68 or -- I'm not sure of the year, '68, '69 or '70 or one or two of those years.

Q When Mr. Betz came up to see you in Nassau County jail did you discuss this 44,000 with Mr. Betz?

A I did.

Q Did you come to any understanding as to whether or not you would pay that $44,000?

A I don't believe I had an understanding with

him when we had a discussion, but I do believe that my attorney said to me previous to the discussion with these three men that Mr. Betz is interested in the letter that I wrote to my attorney and "He is very interested in what happened down there and if you tell him everything, how it happened, they will see what they can do."

Q Your attorney told you, as I understand it, that if you provided certain information to Mr. Betz it was his opinion that you wouldn't have to pay the $44,000?

A That was sort of the indication I got from my attorney.

Q And that is still your understanding, isn't it, that you don't have to pay the $44,000?

A I have not ever heard anything definite on that matter to this date. Since the time that Mr. Betz came to see me I have never actually spoken to Mr. Betz again or heard from him.

Q The last you heard about the $44,000 was that it looked like you weren't going to have to pay it, isn't that correct?

MR. LAVIN: Objection, your Honor, to the form of the question.

mball Lipsky-cross

THE COURT: Sustained.

BY MR. DUKE:

Q Did you discuss this $44,000 claim with Mr. Lavin?

A I don't recall if I discussed the $44,000 with Mr. Lavin, and the Internal Revenue matter. I may have mentioned the names to him. I don't recall if I went into any great deal with Mr. Lavin.

Q Mr.Betz, what is his title, if you know?

A Mr. Betz?

Q Yes.

A I believe he is assistant United States attorney with the federal Organized Crime Strike Force in Miami, Florida.

Q Mr. Lipsky, did I understand your testimony to be that you met Mr. Pacelli in a discotheque in April of 1971?

A No, sir, that is not what I said.

Q Did you meet him in a discotheque?

A I met him in a discotheque.

Q When?

A Some time in 1970.

Q You did testify you went to work for him in April, did you not?

A I said some time after Easter, 1971.

Q I see. That's when you worked for him, after Easter,, 1971?

A Correct.

Q Is it your testimony, Mr. Lipsky, that you were never in the narcotics business in any form or fashion prior to April, 1971?

A What do you mean, in the narcotics business?

Trafficking in narcotics?

Q Buying and selling narcotics.

A Prior to?

Q Prior to the time that you claim you went to work for Mr. Pacelli.

A That's correct.

Q Prior to that time you never bought or sold narcotics?

A You mean never bought or sold --

Q That's the question.

A -- narcotics, cocaine or heroin?

Q Illegal drugs.

A I don't understand your question, Mr. Duke.

MR. DUKE: Would the reporter read the question back, please.

THE COURT: I think I can see what the difficulty is. Are you talking about as a business? You asked a few questions ago whether he was in the business and then you followed the question so that the context may be -- are you asking him about it as a business or whether he actually purchased narcotics away from a business?

MR. DUKE: I will rephrase the question, your Honor.

BY MR. DUKE:

Q Prior to the time that you claim you went to work for Mr. Pacelli did you ever buy illegal drugs?

A I think I may have bought some just for my own use in Miami or in New York, very minute quantities, before I went to work for --

Q There is no doubt in your mind about it, is there, Mr. Lipsky?

A No doubt in my mind about what?

Q That you bought illegal drugs prior to the time you claim you went to work for Mr. Pacelli.

A Just as I said, Mr. Duke, in minute quantities.

Q What kind of drugs did you buy prior to this time?

A When I was in Miami occasionally I bought some pot for my own use and I think once or twice in New York before I went to work for him I bought some coke in a small amount.

Q You never bought any coke before you came to New York?

A I do not believe I bought any coke before I came to New York.

Q Did you ever sell any coke prior to the time

you came to New York?

A Sell, any coke?

Q Yes.

A No, sir.

Q You used coke prior to that time, did you not?

A Prior to coming --

Q To your coming to New York.

A In 1970?

Q Yes.

A I don't believe I ever used coke before I came to New York in 1970.

Q Haven't you used coke off and on since 1967, Mr. Lipsky?

A 1967? Yes. That's when I came to New York and I was training for a stockbroker in New York then.

Q All right.

A I am a little confused by your question.

Q That's understandable. You came to New York, following the trouble that you got in down in Florida, you came to New York in January of 1970, is that correct?

A '71.

Q January of '71?

A Yes.

Q Prior to that time, January of '71, did you ever buy any coke?

A Yes, as I have just told you, for my own use.

Q Your use of coke goes back to 1967, right?

A I believe you are correct, yes.

Q Did you ever sell any coke between 1967 and January of 1971?

A I don't believe I did. I don't think so.

Q Do you know a man in Miami called Bobby Era?

A I do.

Q A friend of yours?

A He was.

Q During 1970 did you engage in any illegal activities with Mr. Era?

A 1970?

Q Yes.

A I can't pinpoint the year exactly, but --

Q '69 or '70?

A I believe I did.

Q What were those?

A Well, there were a few things, a few deals that we did.

Q What kind of deals were they?

A There was myself and Mr. Era and another man and there was a fellow came into my stock office with a check for $40,000 and it was a crap game that was set up and this man lost -- this man with the $40,000 lost $15,000 in the crap game and I received $3750 as one-fourth of that.

Q You were a partner in the crap game?

A I wasn't at the crap game, but the person who had the $40,000 was -- I knew him first and Mr. Era and two other persons took this man with the $40,000 to the crap game.

Q And for introducing himyou got 3750?

A That's sort of what happened, yes.

Q Was it a crooked crap game?

A I wasn't at the crap game, but I don't think it was a crooked crap game. I just think the person was confused and these people confused him and relieved him of $15,000.

Q Did you report that $3750 on your income tax, Mr. Lipsky?

A I don't believe I did, Mr. Duke.

Q There is no doubt in your mind about it, is there, that you didn't?

A No, sir, I did not.

Q This $40,000 check deal, what was the deal there?

A This man came into my stock brokerage office and wanted to buy securities, some stocks, and he had $40,000 that his father had given him to buy some stocks with.

Q And what happened?

A He bought some stocks with me, almost $40,000 worth.

Q And what was Bobby Era's connection with that?

A None up to this point.

Q What happened after that?

A Well, I don't recall what happened first.

Q Did you just earn a commission, a normal broker's commission, on that deal?

A On the buying of the securities?

Q Yes.

A Yes. It was all a regular commission I earned as a registered representative of the firm.

Q Is that all there was to that transaction?

A You mean with the buying of the stocks?

Q Yes.

A That's all there was to buying of the stocks.

Q What else was there to the deal?

A You mean --

MR. LAVIN: Objection, your Honor.

THE COURT: Sustained.

Q Did you and Bobby Era take $20,000 off a man from Detroit on the claim that you were going to go to Puerto Rico and buy some narcotics with it?

A The man wasn't from Detroit, Mr. Duke.

Q Where was he from?

A Managua, Nicaragua.

Q Are my facts otherwise substantially correct?

A I am trying to think. No, I am sorry. Yhe man from Managua, Nicaragua, the money wasn't taken from him on -- what did you say, a narcotic deal?

Q Yes, either on a narcotic deal or the pretext of a narcotic deal.

A No. The man from -- the man that lost his money on the narcotic deal wasn't from Managua or Detroit.

Q What was the narcotic deal?

A There was a man from Miami Beach, a stockbroker, and Mr. Era and myself and another party cooked up -- had a plan where I would go on a plane to Puerto Rico and stay at a hotel a few days and supposedly have my own $20,000 of my partner's money and mine in

my pocket and this other person who I told about the deal wanted to get in on it and he gave me $20,000 -- I believe it was 20,000, I think it was $20,000 -- in cash and I went to San Juan, Puerto Rico supposedly to buy cocaine from a person that I knew over there and I was going to bring it back supposedly sewn inside the lining of my sports coat on the airplane and he was to receive a share of the money that we were going to sell it for in Miami, which would be triple what he put up.

Q You were going to undertake not only to get it and to bring it in, but to sell it in Miami?

A That's what I represented to this person who put up the $20,000.

Q Did you ever buy any coke in Puerto Rico?

A No, sir. It was a completely --

Q I mean on any occasion.

A No, sir. That's the only time I was ever in Puerto Rico and nothing -- I didn't even know anybody in Puerto Rico.

Q What did you do with the man's $20,000?

A Well, when I came back I split it up between myself and my other two partners.

Q Did you ever see this victim again?

A This person?

Q Yes.

A Yes.

Q What did you tell him?

A I told him that I was on an airplane coming back with the drugs and since I had been to the grand jury previously in Miami that on the airplane I saw an agent and I told this man that the agent got up on the plane, started to walk toward me, and I got up and went into the bathroom and locked the door to the plane's bathroom and took all the drugs and flushed them down the toilet.

Q Did he believe that story or appear to believe it?

A He did at first.

Q Have you told the government about this transaction that you just described?

A I believe I told it to Mr. Betz and I think I told it to some agents when I was first being thoroughly interrogated back in March or April of '72.

Q What year did this occur in?

A This trip to Puerto Rico?

Q Yes.

A Well, it occurred -- I am not sure of my years, Mr. Duke. It occurred after my grand jury appear-

ance in Miami.

Q That was May, 1970?

A Yes. I think this happened -- this happened subsequent to that grand jury appearance.

Q Did it happen after you were indicted on the stock case?

A I think it happened before I was indicted on the stock case. I am not sure. I think it was after the grand jury appearance and before the indictment. It may have been after the indictment, but I don't think so.

Q Do you recall whether or not the indictment was in June, on June 25, 1970?

A I think you are correct with that date.

Q And your grand jury appearance was on May 7, 1970?

A Are you telling me that it is --

Q Does that sound like that is the correct date of your grand jury appearance?

A I think -- you showed me those papers yesterday. I think that was the date.

Q Your best recollection is that this transaction in Puerto Rico occurred between that date of May 7th and June 25th?

A As I say, to my best recollection, I think it was right in between those two dates, but it may have been after the indictment, but I don't think so.

Q Did you have any other deals, illegal deals, with Bobby Era or these other individuals that you have described in 1969 or '70?

A I believe so.

Q What kind of deals did you have, illegal deals?

A Well, this man from -- this man who had the $40,000, who bought the stocks with me, wanted to gamble and these other two partners of mine had a plan where he would lose a lot of money in football games. We would make gets for him with -- supposedly make bets for him in denominations of two and three and four thousand dollars a game and we didn't tell him the games he was betting until after the scores were in. Anyway, the man lost 20,000, about $20,000, and he had to sell some of the stocks he had purchased with me to pay for the bet.

Q Any others?

A Well, let's see. I am trying to think how many you --

Q There is the stock deal you testified about

yesterday that you were indicted on.

A Yes.

Q There is the narcotics deal.

MR. LAVIN: Objection to the characterization. That is not what he testified to.

THE COURT: Don't sum up the evidence. Just continue to ask questions.

Q Do you recall any other deals of that type in 1969 or 1970, any illegal deals with Bobby Era?

A Let me think a minute.

Q Take your time.

A There may have been one more or two more, one more. I don't recall. Those were the main ones that occurred.

Q You have never been prosecuted anywhere for any of these crimes, have you, Mr. Lipsky?

A The ones I just told you about?

Q Yes.

A Except for the stock deal in Florida, where I was --

Q That is the one you testified about yesterday?

A That's correct.

Q Other than that, you have never been prosecuted

at all for any of these crimes?

A Not the ones I just told you about.

Q And you never reported any of this illegal money on your income tax?

A No, sir.

Q Your testimony then, I take it, is that prior to the time when you claim you went to work for Mr. Pacelli you were never in the narcotics business, you just pretended to be in the narcotics business?

A You mean on that --

MR. LAVIN: Objection to the form of the question.

THE COURT: Ask the question directly instead of asking him to characterize his testimony.

Is it a fact that you pretended to be in the narcotics business prior to going to work for Mr. Pacelli?

THE WITNESS: I am sorry. That's the question, sir?

THE COURT: Yes. Is it a fact that you pretended to be in the narcotics business prior to going to work for Mr. Pacelli?

THE WITNESS: Yes, sir, one one occasion.

Q I take it, Mr. Lipsky, your testimony about

these deals that occurred in Florida is that they were engineered and cooked up by the other people, not you?

A Not entirely, sir.

Q What was your role in these deals?

A In each one?

Q Did you have a general role in the various deals or did your role vary from one deal to the other?

A My role varied from one deal to another.

Q You told us that your partners cooked up the deal, the deal to Puerto Rico, didn'tyou?

A Myself and one other person thought of that, and then --

Q Allright. You participated in putting that one together, right?

A That's true.

Q Were there any in which you didn't have any part in the decision-making process?

A The crap game deal.

Q All you did was bring the people together in that one?

A I didn't even do that. I just received my 25 per cent share because this person with the money came to me first.

Q Vringing this up to April of 1971, when you claim that you went to work for Mr.Pacelli, is it your testimony that during the period from April, 1971 until the date of your arrest, March, '72, your role was merely to work for Mr. Pacelli?

A Yes, sir, in various forms.

Q You didwhat he told you to do, right?

A That's correct.

Q And that consisted of making deliveries and turning bad money into good and things of that sort, right?

A That's correct.

Q You never actually sold any narcotics on your own behalf during that period, did you?

A Yes, I did, towardthe end.

Q On your own?

A Yes. Sold or gave.

Q You sold some narcotics, in fact, you were in partnership with Marge Jacklone, were you not, during that period?

A It was supposed to be a partnership.

Q You had an arrangement with her whereby you provided the cocaine and she would sell it and you would get half the proceeds, isn't that correct?

A Partially correct. She was supposed to give me half the proceeds.

Q She cheated you?

A Well, she always -- let's just say she always gave me some story.

Q In fact, you even went down to Miami around Thanksgiving in 1971 with her in part forthe purpose of selling cocaine down there, did you not?

A I went down there just to go down there, because that's where I am from. It was her idea to take some coke down there to sell to -- that she would sell to all the people that I knew down there who did not have any access to buying coke and she was going to sell it to them and give me half the proceeds.

Q And she did sell some down there?

A Some.

Q And she gave you some money?

A Some money.

Q And you went down there on the plane with her, didn't you,you went together?

A Margie went to Miami with me a lot of times. Sometimes we went down together, sometimes she went down before me with her son or somtimes she went down after me. We went down together,one or two times to-

gether. We may have flown together on this occasion. I don't recall exactly.

Q Did she sell any of your cocaine on any other occasion than the one you described around Thanksgiving of 1971 on these trips to Miami?

A I believe she did.

Q How many times on these trips where she went down in 1971 did she sell cocaine, to your knowledge?

A Most of the times she was down there she was trying to sell some coke.

Q How many times, if you can recall? Approximately how many trips down to Florida did she make?

A I am not sure, Mr. Duke. She was always down in Florida. She might have been there half a dozen times in '71, maybe more.

Q To your knowledge, did Marge Jacklone ever sell any cocaine in 1970?

A Yes, I think she did.

Q And in 1969?

A She may have. I was in Florida most of 1969 and I think she had a partnership with someone else in New York selling coke in New York prior to me -- prior to Easter, '71.

Q You had a key to her apartment, didn't you, Mr.

Lipsky, in 1971?

A I had keys to her apartment, that's correct.

Q And you let yourself in and out at will in her apartment during 1971?

A Well, yes. She didn't know I had one key -- she didn't know I had both keys. She knew I had one key. She didn't know I had the other key. But I did let myself in and out.

Q You used her apartment as a stash for your cocaine, didn't you, Mr. Laipsky, in 1971?

A For my cocaine?

Q You stashed cocaine in her apartment in 1971?

A That's not exactly correct, Mr. Duke. I gave her some coke and then she put it where she wished to keep it and then it was hers to get rid of, to sell.

Q But there was one occasion, was there not, in 1971, in which you put a kilo of cocaine in her apartment, stashed it in her apartment?

A No, that's incorrect, Mr. Duke.

Q Was there never any occasion when you put a key of cocaine in her apartment?

A A key of cocaine?

Q Yes.

A Not that I can recall putting a key of cocaine in her apartment.

Q Mr. Lipsky, were you interviewed by Anthony J. Senneca on June 14, 1972?

A Senneca? What was the date, Mr. Duke?

Q June 14, 1972.

A I think I recall that.

Q Withdrawn, withdrawn. Sorry. That is the date of the report. On May 3rd, 1972, were you interviewed by Special Agents Joseph Lore, Frederick Gormandy and Anthony Senneca?

A I recall that, that meeting.

Q Would you tell this jury whether or not on that occasion you told these officers -- whether or not you made this statement: "Lipsky stated that he stashed the kilo of cocaine at the apartment of a female friend, Margie Jacklong,

Apartment 1-A, 415 East 52nd Street, New York, New York, without her knowledge."

Did you make that statement?

A If those agents wrote that down, I did stash a kilo of narcotics, heroin, to be exact, in Margie Jacklong's apartment; but if they put down cocaine, they are in error because I told -- if they asked me that question I replied that I put a kilo of heroin in her apartment, not cocaine.

Q That was in 1971?

A No, sir. That was in 1972.

Q Mr. Lipsky, you used cocaine on almost a daily basis for a long time, haven't you, at least prior to your arrest?

A As I said yesterday, Mr. Duke, an irregular basis. I wouldn't say a daily basis. Sometimes it was a daily basis, but sometimes I wouldn't bother with it at all.

Q But you used it for a long time; that is correct, isn't it?

A I don't know what you mean by a long time, Mr. Duke.

Q Were you interviewed, Mr. Lipsky, by a psychiatrist by the name of George Lake on or about December 26, 1972?

A I don't remember the man's name, Mr. Duke, but I remember the day after Christmas last year I was inter-

viewed by two psychiatrists I think they were, in a hospital; in Nassau County.

Q Did you discuss with them your use of drugs?

A I may have. I think I may have if they asked me.

Q Did you tell them that you used cocaine on a daily basis on almost a daily basis for a long time?

A I don't recall that question and that answer, Mr. Duke, but I may have said that. That's a year ago so I can't recall exactly what I said.

MR. DUKE: May I show it to the witness, your Honor?

THE COURT: What are you showing him? You want to mark something for identification?

MR. DUKE: Just want to refresh his recollection.

THE COURT: Has it got an exhibit mark?

MR. LAVIN: It hasn't been marked.

MR. DUKE: It hasn't been marked.

THE COURT: You are not showing him his statement. You are showing him somebody else's statement?

MR. DUKE: Yes.

THE COURT: All right. Mark it as Defendants' Exhibit A for identification.

(Defendants' Exhibit A was marked for identifi-

cation.)

Q Mr. Lipsky, I show you Defendants' Exhibit A for identification. Would you look at the first three sentences of the first full paragraph on that page?

A Here?

Q Yes, first three sentences.

Q Does that refresh your recollection as to whether or not you told the psychiatrist that you used concaine on almost a daily basis for a long time?

A Yes, it does.

Q Did you tell them that?

A Yes, I believe I did.

THE COURT: I think we will suspend here for lunch, and resume at 2 o'clock.

Again, I would like to caution the jury, if you are going out, be careful going up and down the courthouse steps. They are still icey and slippery. Let us not have any more accidents.

(Jury left courtroom.)

THE COURT: I have a note from Mr. Duke which reads "At a convenient time before conclusion of my cross examination of Mr. Lipsky, before or after lunch" -- and he adds "preferably after -- I respectfully request a few minutes out of the presence of the jury to request 3500 and

Brady materials and to seek clarification of one of your Honor's pretrial ground rules."

What is on your mind?

MR. DUKE: Yes, sir. Your Honor, I would first call upon the government to produce, if it has them, any of the notes or letters or other memoranda referred to in the testimony of Mr. Lipsky today, and with specific attention to the letter to Mr. Feffer, which has not been turned over; and any notes that Mr. Lavin or other agents have taken in connection with interviewing Mr. Lipsky I request that they at last be tendered to the Court for the Court's examination to determine whether they are 3500 material.

THE COURT: During the recess,Mr. Lavin, you check your files and let me know if there is any material that needs to be produced under that particular request.

MR. LAVIN: I take it what Mr. Duke is referring to is the letter to Mr. Feffer, my notes, if any, and the othernotes -- I don't know what you mean.

MR. DUKE: Any notes taken by agents that Mr. Lipsky testified to the best of his recollection some notes were taken.

THE COURT: They will have to have some relevance to the matter in hand here, and --

MR DUKE: What I am suggesting, your Honor, the

witness testified that it did relate to the facts that he testified to on direct; these interviews; and under the statute it seems clear that --

THE COURT: I don't believe he testified the way you describe it but we will pass that for the moment.

MR. LAVIN: You have all the notes of the agents, handwriting statements, 3500 material by Lipsky to the agents, his handwritten statements. The only thing I don't know about is a letter to Mr. Feffer, my notes are copies of the transcript really with some jottings in the margin. I don't believe they constitute 3500 material. It is the transcript of the last trial.

THE COURT: You look your papers over and see if there is anything to refer to. What is your next point?

MR. DUKE: In the same area, your Honor, I have requested in my pretrial discovery motion and I have amplified in a letter to Mr. Lavin on December 11th, which I would like to make a part of this record, my request for Mr. Lipsky's income tax returns for 1970 and '71, statements to his probation officer during the period April, 1971 to March, 1972, and any memoranda of undertakings, promises, negotiations and the like with respect to Lipsky, any memoranda in the possession of the government concerning him as a witness or the disposition of any cases against him or any assistance that will be given to him.

THE COURT: Mr. Lavin, you will take the lunch hour to consider that request, its propriety, and the extent to which anything has to be produced, and before the session starts at five minutes to 2 you can let me have your report.

What else?

MR. DUKE: May I mark the letter, your Honor, for the record?

THE COURT: Yes.

(Defendant's Exhibit B marked for identification.)

MR. DUKE: The matter I wish clarified, your

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Honor, is this: I believe your Honor stated that objections made by one counsel for defense would inure to the benefit of all, but what I would like to know if possible --

THE COURT: I didn't say that. I said they would inure to the benefit of all affected.

MR. DUKE: Very well. The question I would like to inquire about is whether your Honor has any -- whether that ruling or whether your Honor intended to make any ruling with respect to the availability of questions asked on cross examination by counsel for one of the defendants, as to whether or not those questions are available on the record to all defense counsel in the event that they are objected to and ruled out.

THE COURT: I am at a loss to understand what you are saying. If you could simplify it I would appreciate it.

MR. DUKE: I am considering --

THE COURT: Give me an example of what you are talking about.

MR. DUKE: I am considering letting Mrs. Rosner inquire into some areas that I have as yet made no inquiry into of the witness.

THE COURT: Yes.

MR. DUKE: The question in my mind is whether,

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by not going into that area, if Mrs. Rosner goes into that area and is precluded by -- attempts to and is precluded by the court from going into a particular area, do I have a record that indicates that I attempted to go into that area?

THE COURT: Mrs. Rosner's conduct will affect Mrs. Rosner's clients. If you have any points to make on the record, you should make them. If there is an objection to particular testimony which is sustained, I suppose, because it is not proper cross examination or not sufficiently relevant and material so as to warrant in my discretion the inclusion of the information in this record, and so on, and there is any special point affecting a particular defendant, that particular defendant ought to raise the question by laying a proper foundation. In other words, the fact that she doesn't lay a foundation for something doesn't preclude you from laying a foundation. To go beyond that, without trying to guess what's in your mind, I will have to deal with the situations as they develop.

If you have any ideas about Patsy Parks on the basis of this memorandum that I have here from Mrs. Rosner and you speak up on that I will deal with it.

MR. DUKE: No, your Honor, that -- there

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is very -- to give an example, specific example, there are various matters of psychiatric history of Mr. Lipsky which I haven't touched on. Mrs. Rosner is as well equipped as I am to go into that. I am perfectly willing that she go into it and that I don't take up all of her ammunition by going into it myself, but I don't want --

THE COURT: Not only must you be willing but as a disciplined attorney in this district there is to be no unnecessary duplication.

MR. DUKE: I understand that, and I don't think it is fair to her that she be precluded by the problem of duplication.

On the other hand, if she attempts to go into this area and your Honor sustains objections to her questions, the question in my mind is am I protected on the record from being able to argue that my client was deprived of proper cross examination even though I didn't ask the questions, she asked them.

THE COURT: Why don't you do this: if and when the imaginary situation develops on the record in which you feel that an objection has been made which you would have argued against and the ruling affects your client in some way I suggest that you call it to my

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attention by the usual means of sending up a court exhibit, stating your position on the point, so that I am given an opportunity to realize, if it be the fact, that there is a broader reason for considering the particular question than is apparent from the examination of your co-counsel.

MR. DUKE: I understand that, your Honor. If I have anything special to offer I have got to offer it. That I understand. The question is simply whether I have to submit a writing every time that an objection to her question is sustained saying "I claim it."

THE COURT: Mr. Duke, I don't know what you are getting to. I will repeat to you what I said at the beginning of the trial. I thought that it was understandable. "One objection inures to all parties to whom it applies and need not be repeated by any other lawyer. Exceptions are automatic. This does not apply to the charge."

MR. MITCHELL: Your Honor, the problem has not arisen as far as you are concerned but in the Sperling appeal, where Sperling's attorney took -- tried to interpose some questions which your Honor disallowed, other attorneys are going up on that very point, on the assumption that the rule that you just

read permits them to do so.

THE COURT: I am sitting as a trial judge, not as a Court of Appeals judge.

MR. MITCHELL: I am just telling you, your Honor --

THE COURT: Nor am I giving out declaratory judgments.

All right, we will recess until 2 o'clock.

(Luncheon recess.)

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AFTERNOON SESSION

2:05 p.m.

(In open court; jury present.)

B A R R Y L I P S K Y, resumed.

THE COURT: Go ahead, Mr. Duke.

MR. DUKE: Am I to proceed, your Honor?

THE COURT: Yes.

CROSS EXAMINATION CONTINUED

BY MR. DUKE:

Q Mr. Lipsky, you knew how --

THE COURT: Mr. Duke, just a minute.

There was something that you were going to look up. Is there anything to report first on that?

Why don't you come up to the side bar on the matter that was to be looked at.

(At the side bar.)

THE COURT: Mr. Lavin, have you looked into the questions raised by Mr. Duke before the recess?

MR. LAVIN: Yes, your Honor.

THE COURT: What is your response?

MR LAVIN: As to the things the government doesn't have, we don't have tax returns on Mr. Lipsky, nor do we believe they would have any relevancy. We don't

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have his probation report. There was no federal probation report. There might have been a state one. We don't have that. I don't believe it is admissible 3500 material.

As to Feffer's letter, Mr. Feffer is on vacation and no one else knows about the letter. I have asked Mr. Lipsky and he said it was a personal letter to Mr. Feffer requesting a visit with a girl, a visit with a girl friend.

THE COURT: When is Feffer returning from vacation?

MR. LAVIN: He went for a month, your Honor, down south. He will be back in another two weeks.

THE COURT: All right. We will accept this report as to the general nature of the letter in the meantime, but will you see to it that over the weekend you communicate with him in some way and find out more about it, if there is such a letter and where it is, and have a copy of it put in your hands.

MR. LAVIN: Yes, sir.

MRS. ROSNER: Your Honor, may I suggest there probably is a number where Mr. Feffer can be reached. Since this is Thursday, might the government be asked through the Court to contact Mr. Feffer at the close of business today and ascertain the answer to that.

THE COURT: I have just gotten through asking him

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to do this.

MRS. ROSNER: I thought your Honor said over the weekend.

THE COURT: Between now and the time that you can get to Feffer.

MR. LAVIN: Yes. I will try.

THE COURT: Not later than over the weekend.

MRS. ROSNER: And I would like to join Mr. Duke's application for the production of that letter, your Honor.

THE COURT: First we have to find out if there is such a letter and second we have to find out what it contains.

Go ahead.

MR. LAVIN: Two other items. These are notes, witness interview sheets of Mr. Velie. The Court examined them in the Sperling trial. I don't recall whether they were turned over or not. I have no objection if they are. Mr. Velie argued that they weren't 3500 material because he didn't take them contemporaneous --

THE COURT: You say you have no objection to letting them see them?

MR. LAVIN: No, I don't.

THE COURT: It seems to me that this material was not turned over because it didn't represent a record

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of what the witnesses said. But I am relying on a very faint recollection. I will look at it and if there is any semblaance of reason for turning it over, you have no objection.

MR. LAVIN: No, except the government will contend it is not 3500 material.

THE COURT: I understand. I will look at it while the examination is going on.

MR. LAVIN: These are the witness sheets I used in my examination of Mr. Lipsky. They for the most part are extracts from the record of the Sperling trial with a few pages thrown in. I don't believe they in any way can be considered 3500 material.

MRS. ROSNER: In view of the government's lack of objection I would respectfully suggest, your Honor, that the Court need not peruse the documents, that they should be turned over to counsel, since the government has no objection.

THE COURT: I got your point.

Mark these for identification.

What else?

MR. LAVIN: That's it.

MR. DUKE: Your Honor, may I say that I think I have been misunderstood about the statements to the

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probation officer. It is my understanding that Mr. Lipsky has made many statements to his probation officer while he is on probation.

THE COURT: You are talking about state probation, which has nothing to do with our probation department.

MR.DUKE: No, federal, Southern District of Florida, and the probation officer is in this building I understand. He has been transferred up here. He is still on probation.

THE COURT: I am not going to pass on the question as to whether you are entitled to probation material or not, but I will send down to the probation department to find out if they have anything and deal with it only on a basis of disclosure.

Now, on the question that you raised about objections, frankly I was puzzled all during the lunch hour as to what you were getting at because you left me completely unaware of the destination of your inquiry. I will say this, that in case any general objection does not specifically call attention of the Court to some separate point that any lawyer wishes to make that lawyer should make that separate objection, and I will have no criticism if you want to hand it up in writing, if you don't want to appear to be popping up before the jury, and will deal with it as a Court's

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exhibit. If there are specific grounds that you believe are not covered in a general ground, then it is the obligation of the lawyer to call the attention of the Court to specific grounds.

As lawyers who have practiced before me know, regardless of the way I rule on an objection, if somebody calls my attention to a point that I consider valid I just turn right around, go back the other way, and allow the material to be processed. But you have got to carry home to me what you are talking about. If you do, then I understand. If you don't, a general objection isn't going to help you on an appeal.

MR. DUKE: May I make another attempt, because I clearly haven't communicated.

I am not dealing with objections at all on the part of any of defense counsel. What I am concerned about is if I leave an area of cross examination totally untouched and I rest my cross examination and Mrs. Rosner goes into that area that I left untouched, attempts to go into it, the Court precludes her attempt, am I to be treated as if I had made the same attempt on my cross examination?

THE COURT: In order that you and I don't try to misunderstand each other, you are not to be treated as if you had made the same objection and you are required

from now on in the course of this trial to present your specific point to me. Then I will have no doubt about what your --

MR. MITCHELL: Judge, every time --

THE COURT: Mr. Mitchell, I understand what will happen every time, because now something is being thrown at me that I don't understand, and in order to insure that your clients are adequately protected, object.

MR. MITCHELL: All right. I will have to do it then.

THE COURT: I am sorry. I thought I was doing the defendants a favor by avoiding this rising and falling --

MR. MITCHELL: You were doing us a favor. The only thing is, Judge, if --

THE COURT: I don't know what he is talking about.

MRS. ROSNER: I think there has been a failure in communications, Judge.

MR. MITCHELL: Let us go to a specific. Lipsky is on the stand and Mrs. Rosner says to him, "Were you ever called nutty," just using an example. The district attorney objects and you sustain the objection.

THE COURT: Yes.

MR. MITCHELL: On the general conspiracy charge I would have standing because if Lipsky's story falls the

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whole conspiracy falls. Do I have to get up and object then too? That is what I wanted to know.

THE COURT: You wouldn't be objecting in that circumstance because if you don't want Mrs. Rosner to ask a particular question you as well as the government are bound to object to it. If you do want her to ask a question and she is stopped from asking the question, then, unless you have a specific additional ground other than a general ground for pressing it, you are precluded.

But if you have something specific that should be called to my attention you are bound to call it to my attention.

MR. MITCHELL: I understand.

MRS.ROSNER: I think that answers it, Judge.

MR. PELUSO: In view of this I think I am going to have to specifically join in the application for the letter.

THE COURT: For what?

MR. PELUSO: The letter to Agent Feffer, Assistant U.S. Attorney Feffer.

THE COURT: All right, you join it. He is not an agent. He is an Assistant United States Attorney.

MR. PELUSO: I said Assistant United States Attorney.

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(Defendants' Exhibits C and D were marked for identification.)

THE COURT: On this material, C and D for identification, you say you have no objection to turning it over?

MR. LAVIN: To Mr. Velie's. If the Court feels they should be turned over I have no objection.

To that I do.

THE COURT: I don't think this is 3500 material, and I think I so ruled. Regardless of that fact, as long as it is with your consent, look at it, please.

MRS. ROSNER: Thank you.

(In open court.)

THE COURT: I will mark your two-page memorandum as Court's Exhibit 3, I believe it is.

(Court's Exhibit 3 was marked for identification.)

THE COURT: After I have read it I will let you know what action I take on it.

All right, Mr. Duke.

BY MR. DUKE:

Q Mr. Lipsky, you knew how to determine good cocaine from bad cocaine before April of 1971, didn't you?

A No, sir, not really.

Q Did you have some knowledge of the difference

between good and bad cocaine?

A Before April --

Q April of 1971.

A Only what I was told by word of mouth of other people who used cocaine.

Q What other drugs have you used, Mr. Lipsky?

A Other than coke?

Q Yes.

A Pot.

Q What is pot?

A Marijuana. I think I smoked hash a couple of times.

Q Is that all?

A What?

Q Is that all?

A I think I took one of these funny kind of pills one time, a hallucinogenic pill.

Q Is that a psychedelic drug?

A I don't know the definition of psychedelic. I think it is a hallucinogenic pill. I don't recall the name of it.

Q Is the concept of a psychedelic drug unfamiliar to you?

A The idea of what it does?

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Q What it refers to.

A Well, not exactly, but I don't know the real difference between what hallucinogenic and psychedelic is.

Q They are similar as far as your understanding goes?

A No, they are different as to my understanding.

Q Which have you used, the hallucinogenic drug?

A A pill that was told to me to be hallucinogenic.

Q So is it your testimony that you never used a psychedelic drug?

MR.LAVIN: Objection.

THE COURT: You may answer that question.

A I don't know if the pill I took was psychedelic, but I was told that it was hallucinogenic. I don't know that I used any pill that was -- took any pill that was a psychedelic pill, whatever psychedelic means.

Q Mr. Lipsky, in this interview you had with the psychiatrist on December 26th, 1972, did you tell one of the psychiatrists that you had used a psychedelic drug?

A I am not sure, Mr. Duke. I may have. At the time I gave them that statement, those two psychiatrists, I was under a lot of strain in that jail and I was dragged over there all chained up with no shave for a couple of weeks, the day after Christmas, and I wasn't feeling very well

and these people proceed to fire questions at me one after another.

Q You don't remember what you told them then, is that it?

A No. You just asked me if I told them that I used a psychedelic drug.

Q Let me show you Defendants' Exhibit A. Would you look at the last sentence in that middle paragraph, please.

A Well, this is not a statement that I made, Mr. Duke.

Q Just look at it, would you, please. Then I will ask you a question.

A Fine.

Q Does that refresh your recollection as to whether or not you told the psychiatrists that you had used a psychedelic drug?

A Somewhat, Mr. Duke.

Q Did you tell them that?

A I can't -- again, I can't recall if I said that I used a psychedlic drug. I think I said to them, if they asked me, that I took a pill which was hallucinogenic. As I said, that statement is not in my words. Those two supposed psychiatrists wrote that report, I guess.

Q Did these two psychiatrists interview you to-

gether, jointly?

A They did.

Q You didn't have any conversation with one of them alone?

A Other than the other one?

Q Yes, without the other one being present.

A I can't recall if one went out of the room at times. I was in the room with both of them and one of them may have gone in and out. But they talked to me interspersedly, they asked me different questions, and I think they made notes.

Q Did you give them different answers to the same question?

A I don't think I gave them different answers to the same question. I don't think they asked me the same question more than once.

Q Do you recall whether or not you told them you never used pills?

MR. LAVIN: Objection.

THE COURT: He may say what he recalls.. Bear in mind that on all collateral inquiry the inquiry ends with the response of the witness. That's the rule of law.

A I believe they may have asked me if I used any pills and if they did ask me that question I replied to

them and told them the pills that I had -- that I could remember having taken.

Q You had taken pills prior to December 26, 1972, had you not?

MR. LAVIN: Objection.

THE COURT: Sustained.

Already covered many times.

pm

Q Mr. Lipsky, I'd like to showyou again Defendant Exhibit A. Would you look at the second sentence in this paragraph.

MR. LAVIN: Objection. He hasn't laid a foundation.

THE COURT: He can have him look at anything. He hasn't asked a question yet.

The jury will understand that none of us know what is on that paper. It hasn't been offered in evidence, and it isn't evidence in this case no matter what it says. It is being offered to this witness for some purpose in connection with the examination, and until information therefrom is elicited from the witness stand, or the document is allowed in evidence, you are not entitled to speculate either through inference from counsel's question or any other way, what is in fact on that paper. It is not evidence.

It is being used in certain ways in the examination conducted by the examiner.

Q Mr. Lipsky, is your recollection refreshed as to whether or not you told the psychiatrists that you had taken pills?

MR. LAVIN: I object to that, your Honor.

THE COURT: I think that we went into that before, didn't we?

MR. DUKE: I don't believe we did, your Honor.

THE COURT: You may answer it again. If we didn't.

A Mr. Duke, that paper you just showed me says in someone else's --

THE COURT: No, no, don't say what the paper says.

A All right.

THE COURT: We are not interested in what the paper says. It is not in evidence. The only purpose for which the paper was shown to you was to see if it jogged your memory as to anything. At this moment we are not interested in what is on the paper. It is only for your convenience and to jog your memory, if it does.

A Yes, sir.

THE COURT: And then you deal with it accordingly.

A It jogs my memory.

Q Did you tell them that you had taken no pills?

A It appears that I told them that I had taken no pills.

Q Mr. Pacelli never lived at 1420 Third Avenue while you were living there, did he, Mr. Lipsky?

A He didn't live there while I was living there, no.

Q Thatwas the question.

A No, he didn't.

Q As I understand your testimony yesterday and today, Mr. Pacelli was your boss in connection with the narcotics

activities that you testified about, is that correct?

A That is correct.

Q He was never your partner?

A No, sir.

Q That's quite clear in your mind, that Mr. Pacelli was never your partner in the narcotics business?

A Partner by meaning an equal share of the profits? Is that what you mean?

Q Whatever that term means to you, was he your boss or was he your partner?

MR. LAVIN: Objection.

THE COURT: You may answer it if you can answer it.

A Yes, he was my boss.

Q He was not your partner?

A That is correct.

Q You had a partner, did you not, in the selling of the narcotics that you stashed at 1420 Third Avenue?

A I had a partner?

Q Yes.

A I'm not quite sure what you mean, Mr. Duke. Those were not my narcotics at 1420 Third Avenue. They belonged to Mr. Pacelli and his two partners. I was a worker for them.

Q So that there were no narcotics at 1420 Third Avenue that were owned by you or a partner of yours; is that your testimony?

A That were owned?

Q Yes.

MR. LAVIN: I object to the form of the question.

THE COURT: Rephrase it, please.

Q Did you have a partner with respect to the narcotics that were stashed in 1420 Third Avenue, you yourself?

MR. LAVIN: Objection, asked and answered.

THE COURT: You may answer.

A As you asked me in the earlier session today about a supposed partnership I had with one Margie Jacklone, I recall I did tell you that we had a sort of a partnership where I would give her a quantity of cocaine, she was supposedly to sell it and give me half of theprofits. I had no -- if you could call that a partnership, I had no others other than that small arrangement with Margie Jacklone.

Q Did you testify to a federal grand jury on September 12, 1973, Mr. Lipsky?

A This September, this past? '73?

Q Yes.

A I believe -- I am not sure of the date. I think I testified at a grand jury in September.

Q Do you recall being asked some questions by Mr. Phillips concerning four kilograms of cocaine?

A In September?

Q At any time. I'm not sure of the date of this. I will ask Mr. --

A I have been to --

THE COURT: I think what you should do is be specific with the witness. Now you are all over the lot. You are asking him about a specific date?

MR. DUKE: Your Honor, the date on this is unintelligible.

THE COURT: I don't care what details of it are before the jury until you are ready to ask the witness the question you really want to ask.

Q Yes, September 12, 1973, Mr. Lipsky, you testified before a federal grand jury in this courthouse?

A I am not sure of the date, Mr. Duke, but I testified in this courthouse to a grand jury in September just past.

Q You were under oath when you testified to that grand jury, were you not?

A That is correct.

Q Were you asked this question and did you give this answer with reference to four kilograms of cocaine:

"Q Where did you obtain the 4 kilograms from?

"A My partner at 420 Third Avenue, New York City."

Were you asked that question and did you give that answer?

A Mr. Duke --

Q Can you just answer the question, Mr. Lipsky?

A I can't answer it in the form you ask, Mr. Duke, because I think there is an error in the question, because my address was not 420 Third Avenue, it was 1420 Third Avenue, I think the word you are referring to is not partner but apartment.

THE COURT: He says that the transcript that you are looking at is in error in two respects. He says that the address is wrong and the word "partner" should be "apartment."

MR. DUKE: He hasn't even seen the transcript, your Honor.

THE COURT: But I am just repeating to you his testimony. I am not --

MR. DUKE: I understand his testmony.

THE COURT: I am not reflecting on it one way or the other. Do anything you want.

MR. DUKE: I understood his testimony. I just want to show him the exhibit and see if it refreshes his recollection.

Q This is No. 3523. Would you look at the question and answer at the top of the page?

A Yes, I see.

Q Did you state -- were you asked the question and did you give the answer that I just read to you?

A I did not give the answer that is stated on that page.

Q All right. It wasn't 420 Third Avenue, it was 1420, is that correct?

A That's part of the error.

Q And your testimony is that the words "my partner" here are not what you said?

A That is correct.

Q What did you say?

A "My apartment."

Q In February 1972, Mr. Lipsky, you moved all the paraphernalia and narcotics out of 1420 Third Avenue, did you not?

A February of '72?

Q Yes.

A Yes, Mr. Duke.

Q Who did you give them to?

A A man named Edgardo Ramirez.

Q You are quite sure of that?

A You mean who did physically transfer them to?

Q Yes.

A Edgardo Ramirez.

MR. DUKE: Bear with me, your Honor? I seem to have mislaid the document.

(Pause.)

MR. DUKE: I will pass that for the moment.

Q Mr. Lipsky, does Mr. Pacelli have two children?

A Does Vincent Pacelli, Jr. have two children?

Q Yes.

A Not that I know of.

Q Does he have any children?

A Not that I know of.

A Children of his own?

Q Yes.

A Not that I know of.

Q Was Herbert Sperling your boss?

A My boss?

Q Yes.

A He was not.

Q You never met Herbert Sperling, did you?

A Whatdo you mean met, Mr. Duke?

Q Introduced to him, shake hands with him, say "Hello"?

A I never shook hands with Herbert Sperling.

Q Were you ever introduced to him? Did you ever speak to him?

A I never spoke to Herbert Sperling.

Q Mr. Pacelli, you paid the rent at 1420 Third Avenue, did you not?

A I am sorry, my name is Lipsky.

Q I am sorry, Mr. Lipsky, you paid the rent, Mr. Lipsky, paid the rent at 1420 Third Avenue; is that correct?

A From the time I moved in there?

Q Yes.

A Yes.

Q April 1971 is when you moved in?

A Yes, I believe that's the correct month.

Q Did you understand your testimony to be that the first ten or 15 days after you moved in you never left the place?

A To the best of my recollection, it was the first ten to fourteen days, somewhere in that period, maybe nine or twelve days, I'm not sure. It was ten days to two weeks

to my best recollection.

Q You never left the apartment?

A I went down and got my food and brought it back up and ate in the apartment.

Q What do you mean by down?

A Down.

Q Outside?

A Down to the ground floor and there was a bar on the corner of 81st Street and Third Avenue. Buy a sandwich and coke and come back upstairs and eat in the apartment.

2a pm

Q Mr. Lipsky, the Yellowfingers Restaurant about which you testified has large windows, does it not?

A Yes, it does.

Q Picture windows?

A Yes, it did at that time.

Q Yes, at that time, 1971. And when you are sitting in there you can easily see in or out, can you not?

A That's true.

Q Did you testify on a prior occasion in court that you and Mr. Pacelli in late September, 1971 met a man named Valentine at Yellowfingers?

A Did I testify about that?

Q Yes.

A Yes, I have testified about that.

Q And that you and Mr. Pacelli had dinner that evening at Yellowfingers?

A I believe we were having something to eat. I don't know if it was dinner. We had something to eat there.

Q After you had dinner did you testify that you thereafter drove to your apartment and got some cocaine in a car and returned the car and came back to Yellowfingers?

A Returned the car where, Mr. Duke?

Q Well, left it somewhere in the neighborhood of Yellowfingers and then returned the keys to Yellowfingers?

A That's correct.

Q And you turned the keys over to somebody?

A That's correct.

Q Did you testify that Mr. Pacelli was still there when you returned?

A That's correct.

Q Were you arrested that night, Mr. Lipsky?

A Was I arrested that night?

Q Yes.

A No, sir.

Q Were you ever arrested between April, 1971 and March 1, 1972?

A Between April, 1971 and March of '72?

Q Yes. You were arrested on March 2nd, you testified about that, but prior to that arrest.

A Between April --

Q From that time back to April, '71, were you ever arrested?

A Between April, '71 and March of '72 was I arrested?

Q Yes, March 1.

A March 1, I do not believe so. No, I was not.

Q You are quite sure about that, aren't you?

A I am pretty sure about it. I was never arrested, physically arrested.

Q Yes, leaving aside traffic problems.

Did a policeman or law enforcement officer ever take you into custody?

A Not that I can recall, no, sir.

Q Were you ever questioned by law enforcement officers during that period in New York City?

A Between April, '71 and March of '72 was I ever questioned by law enforcement people?

Q Yes. Excluding your probation officer.

A Not that I can recall at all.

Q Again excluding your probation officer, did you have any communications of any kind with law enforcement officers during that period, April, 1971 to March 1, 1972?

A In that period I went to Florida for the case, for my sentencing on probation with Federal Judge Joe Eaton on October 28, '71, I believe it was, if you call that conversation with law enforcement people.

Q Did you have any such conversation with any

law enforcement people in the City of New York?

A When, Mr. Duke?

Q During the period April, 1971 to March 1, 1972.

A I can't recall any such conversations or any -- anything alongthe lines of what you are talking about.

During that same period April, 1971 and March 1, 1972 did you ever meet anyone named Anunziata?

A Nunziata?

Q Yes.

A Did I ever meet anyone by that name?

Q Yes.

A I did not.

Q Or D'Ambrosio?

A I did not.

Q Or Racques?

A I did not.

Q I take it your testimony is not only didn't you meet them, you not only did not meet anybody by that name, you did not meet anybody that you now know to have those names?

A In the period you are talking about, from April, '71 to March 1, '72, I never knew individuals by the name -- three named individuals you just said.

Q You now know those individuals, do you not?

You know now who they are?

A I have heard the names, yes.

Q Did you meet those individuals whom you now know during that period?

A Did I actually meet them, or know them?

Q Talk to them.

A Meet them, know them, or hear their names?

Q Talk to them.

A Never.

Q When in point of time did you first tell the story that you related on direct to law enforcement officers?

A Which story is that, Mr. Duke?

Q What you testified about onyour direct.

THE COURT: You willhave to be more specific. We can't go over the direct to that extent.

Q Did there come a time when you related to law enforcement officers your relationship with Mr. Pacelli?

A Yes.

Q When was that?

A The first time I told them?

Q Yes.

A I think it was when I was being questioned for

the first time bythe federal people, the first or second time by the federal people in the Nassau County jail. Two assistant United States attorneys came to question me in the district -- assistant district attorney's office in Nassau County, but there were no narcotic agents with them, and then on a subsequent meeting in the Nassau County jail --

Q Could you fix it in terms of the month that it occurred, the month and the year?

A Yes, I believe it was in -- I think it was in March of '72, shortly after I was arrested.

Q Have you ever asked any federal narcotic agents to render any assistance on your behalf in connection with your legal problems?

A Have I ever asked any narcotics agents.

Q Yes.

A BNDD agents to --

Q Yes.

A I believe I have asked some agents when I was still under the murder indictment what's going to happen, what's going to happen --

Q I am not talking about advice, Mr.Lipsky. Did you ever ask any of them to help you?

MR.LAVIN: Objection, your Honor, to the

form of the question.

THE COURT: It seems to me that it is not sufficiently clear and the objection to the form is sustained.

Q Did you ask any of these narcotics agents to render any assistance to you in connection with any legal proceedings, either pending or possibly to be brought against you?

A I can't recall exactly if I asked them to render any assistance. I don't think I asked any narcotics agents, federal or Task Force agents, to render me any assistance, because they told me that my legal problems, I would have to talk to the assistant United States attorney who knew all about my situation.

Q So it is your testimony that you not only didn't ask any of them for help, none of them have given you any help, is that correct?

MR. LAVIN: Objection, your Honor.

THE COURT: Sustained.

Q Have any of them helped you in your legal problems?

A What do you mean by helped, Mr. Duke?

Q Rendered you any assistance in any problems that you have of a legal nature.

MR.LAVIN: Objection to the form of the question.

THE COURT: Sustained.

Q Do you know a federal agent named John LePore?

A I have met John LePore.

Q Mr.Lipsky, you made a written statement to Nassau County detectives on March 2, 1972, did you not?

A Yes, Mr. Duke, it was actually March 3.

Q You made a sworn statement, a deposition taken by an assistant United States attorney named Scaring on March 3, did you not?

A I believe I did, Mr. Duke.

Q Didn't you make a written statement prior to that on March 2?

A Well, there was a statement being taken down in writing but I did not write it, Mr. Duke.

Q Mr. Lipsky, I would like to show you a document numbered 3507. Do you recognize that page, that first page, as a statement that you made?

A That I made to who, Mr. Duke?

Q As a statement you made to anyone; just the first page.

A Well, the statement that I gave to the Nassau County people was being taken down in longhand by a man.

I think this is a sort of a transcription of what the man took down in longhand. I recognize the facts.

Q Do you acknowledge that first page to be what you said on that occasion?

MR. LAVIN: Objection, your Honor.

THE COURT: Overruled.

A Can I look at it?

Q Yes, sir.

A Yes, I remember those facts, Mr. Duke.

Q That page is your statement, is it not, that first page?

A Well, as I said, I remember those facts but that's not the actual copy in longhand that the man took down. That's typed up.

Q Right. It's not a longhand statement but it's a typed version of the longhand statement you made, is it not?

A It seems to be, seems to be that.

Q In connection with the homicide charge against you in Nassau County, did you, through your attorneys, make a motion to suppress as evidence the statement you made on March 2, 1972?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Mr. Lipsky,when you made this, prior to your making this statement of March 2, 1972 were you warned of your rights?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Mr. Lipsky, did Mr. John LePore go out to Nassau County and testify in your support --

MR. LAVIN: Objection.

MR. DUKE: May I finish the question?

Q -- on your behalf in a suppression hearing concerning the statement of March 2, 1972?

THE COURT: Objection sustained.

Q Mr. Lipsky, I believe you testified that on March 3rd you gave a sworn statement to Mr. Scaring, is that correct, in Nassau County?

MR. LAVIN: Objection.

A What do you mean by sworn statement.

Q Under oath.

A It is difficult to recall that night but I think I was under oath. I'm not sure.

Q You were asked questions by Mr. Scaring and you gave answers to those questions, is that correct?

A That happened, yes.

Q I will ask you, Mr.Lipsky, if on that occasion, March 3, 1972, you made this statement with reference to Mr. Pacelli, page 51.

MR. DUKE: May I have this document marked.

(Defendant's Exhibit E marked for identification.)

Q With reference to Mr. Pacelli, did you make the following statement at page 51 of your statement of March 3, 1972:

"I met him through his wife, who I had met through his girl, Margie Jacklone, and then he got married, he was getting married in St. Patrick's Cathedral and I was living downtown at the time with this friend of mine, Benny Fabre, and he said to me he doesn't have the head to conduct a wedding of the type he wants to throw for her people. We made the wedding, not -- not his wife's people, out of Detroit.

"He -- he made the wedding. He said, 'I want to have a real nice wedding and I know you know how to do this type of thing.' This was an original come-together. This was the -- this was the original way I began to -- to know him a little bit"?

Did you make that statement?

A Yes. There is an error in the very first

part of it, where you said that Margie Jacklone was his girl. That's not --

Q What did you say?

A Well, if you could read the line over again --

Q It says "through his girl."

A Well, through a girl, it should be through a girl.

Q Through a girl, Margie Jacklone?

A Right.

Q That's what you said?

A Right.

Q Then on page 55 of that same statement were you asked thisquestion and did you give this answer:

"Q Well, did you have any criminal activity or any participation with him in any criminal activity other than this marriage?

"A No, I did not"?

Were you asked that question and did you give that answer?

A I believe I did, yes.

Q Were you then asked this question:

"Q Was he involved in that at all?

MR. LAVIN: I object to thequestion.

THE COURT: Sustained.

MR. DUKE: Withdrawn.

Q Were you asked this question and did you give this answer:

"Q With respect to the incident that you had in Florida with the stolen stocks and bonds?

"A Yes, sir.

"Q Was he involved in that at all?

"A No, Idid not know this man at that time."

MR. LAVIN: Objection. Your Honor, may I make an objection in writing regarding this statement?

THE COURT: I want to see counsel at the side bar, all counsel.

(At the side bar.)

THE COURT: Mr. Duke, I think in the fair representation of your client the court ought to warn you that I believe that you are engaged in opening the door by asking questions that will elicit an explanation of any answer about other criminal activity with this man. I think that you ought to think on the subject very carefully before you propose any such area.

The court is well aware, as I believe every lawyer is, of what it could lead to as far as Pacelli is concerned to have this witness testify to certain matters in Nassau County, and by opening the door as you

have in asking that question you are inviting the government to reply.

I say nowthat I won't, as a matter of discretion, allow the government to take advantage of your having opened the door to this point. But from here on you are on your own.

I have a note here from Mrs. Rosner, which I will read into the record out of the presence of the jury only sothat I can get her version as to her handwriting.

MRS. ROSNER: Sorry, Judge.

THE COURT: "I would respectfully request that counsel should be permitted to inquire into the specific activities of agents of the federal government undertaker on Mr. Lipsky's behalf, including Agent LePore's testimony at Lipsky's suppression hearing, because it bears on Lipsky's relationship to the government and his bias and motive to testify on behalf of the government. Past activities may be shown to establish his sense of indebtedness to the government."

While the major premise is correct, that past activities may be shown to establish a sense of indebtedness to the government, to go into the details suggested in these collateral matters would turn this case

into an unfair trial and involve us in collateral circumstances that do not bear on any legitimate issue in this case, including the issue of credibility of the witness, and I deny the request.

MRS. ROSNER: May I add one thought, your Honor? Motive is never collateral and can even be proven by evidence independent of the witness' answer. I rely specifically on United States against Massino and United States against Padgent in the Second Circuit.

THE COURT: The rule of law is very clear, but the application of it is not pertinent here.

MR. DUKE: Your Honor, may I just state that I had no intention to open the door. I would just like to state that on the record.

THE COURT: You may not have had any intention, but I am telling you what the effect of it was, and it would give the court great concern if you inadvertently opened an area that you later on were mortified with.

MR. LAVIN: Your Honor, I further object to Mr. Duke reading from something which is obviously a verbatim transcript. If he picks out a question that is out of context I might not be able to clear it up because I might have to ask Lipsky a question, to put

the question Mr. Duke asked in context, involving Mr. Pacelli's participation in the murder.

THE COURT: I understand what you are saying, but I am not going to hold him with his feet to the fire for having opened the door thus far, and I am going to shut the door hard. If he opens the door again that's on him.

(In open court.)

MR. DUKE: May I proceed, your Honor?

THE COURT: I might also suggest to you, Mr. Duke, that you may wish to consider overnight whether an application should be made in respect of eliminating any portion of an inquiry and a response, and I needn't go into the detail of it since the counsel and the court alone understand what I am referring to.

MR. DUKE: Yes, your Honor.

BY MR. DUKE:

Q Mr. Lipsky, you have a good memory for detail, do you not?

A I think so.

Q And a good memory for dates?

A Somewhat. Can you statefor the court, for this jury, a specific date and time that any of these transactions that you claim occurred between you and Mr.

Pacelli,give us a specific date and time that any of those occurred.

MR. LAVIN: Objection, your Honor.

THE COURT: No, overruled.

A A specific day?

THE COURT: He wants to know can you give the date, day and time in exact detail as to any of the transactions.

A I could narrow it down as best I could, like I said yesterday,to certain months, and some other ones, transactions, I could narrow down a little closer to Christmas of '71. But as to specific day, date and time of day, I am afraid I can't tell you.

Q I take it then you can't tell me any transaction that occurred on any specific date.

A Date?

Q Date.

A No, sir, I don't have any specific dates fixed in my mind that any specific transactions took place.

Q With respect to Marge Jacklone, she was a good friend ofyours for some years, was she not?

A A few years, yes.

Q Since 1967, to be specific?

A That's correct.

Q You have told the government, have you not, about your partnership with Miss Jacklone in the selling of cocaine?

A Yes, I have told you here.

Q I mean have you told the government prior to your testifying here?

A I have.

Q Do you recall about when that was that you told the government?

A No, not exactly.

Q Can you approximate?

A Well, I have been talked to by so many different people at so many different times, I don't know if it was back in March of '72 or in early June of '73 or some time in between those two dates. I can't recall the first time I told the agents or the assistant United States sttorneys who were talking to me about Mrs. Jacklone.

Q Maybe this will be of assistance. I am showing you No. 3522, Do you recognize that as being in your handwriting?

A Yes. Yes, I think this is my handwriting.

Q Is this a statement that you wrote out and gave to the government?

All I want to know, Mr. Lipsky, is if that refreshes your recollection as to the time, the approximate time that you first told the government about your partnership with Miss Jackone.

A Well, Mr. Duke, that's a statement that I made, wrote out myself, after being asked to do so, about my transaction with Miss Jacklone, and I may have told them about it previous to that written statement by me.

Q I understand. Do you recall approximately when you made this written statement, No. 3522?

A I think it was between April '73 and some time in June of '73. You are asking when I wrote that out?

Q Yes.

A I think it was either in April, May or June of '73.

Q So it is your best recollection, not this statement, that you told the authorities about this relationship with Marjorie Jacklone in 1972 or 1973?

A I think I told them first in 1972. I am not sure. I think I did, though.

Q She hasn't been indicted, has she, Mr. Lipsky?

A I don't know if Mrs. Jacklone has been indicted.

Q As far as you know, she has not been, to the best of your knowledge?

A To the best of my knowledge, she hasn't been.

Q Your answer was what?

A To the best of my knowledge, she has not been indicted.

Q When did you live with Bennie Fabre, Mr. Lipsky?

A I lived with Bennie Fabre at his apartment on 18th Street from some time in January of '71 until the time around a little after Easter time '71 that I moved from Fabre's apartment up to 1420 Third Avenue.

Q When did you first meet Mr. Fabre?

A I met Bennie Fabre first in 1967, I believe.

Q Was he a friend of yours from 1967 forward?

A You mean was he a friend of mine in 1967?

Q Yes.

A No. He was Margie Jacklone's boyfriend and I met him sort of through her or because of her.

Q At some point did he become a friend of yours?

A That's true.

Q At least by the time you moved in with him he was a friend of yours?

A Yes, true.

Q Was he in the narcotics business?

A When I moved in with him?

Q At any time?

A I don't know that Mr. Fabre was in the narcotics business by actually knowing it. I heard just conversation that he once had been in the narcotics business.

Q Did you tell the authorities that he had been in the narcotics business?

A The authorities asked me about Mr. Fabre and I said that to the best of my knowledge Bennie Fabre was no longer in the narcotics business.

Q Did you tell them that he had been in the narcotics business?

A I think the -- Mr. Duke, I believe that the narcotics agents knew that Mr. Fabre --

Q That is not my question, Mr. Lipsky. Did you tell them that Mr. Fabre had been in the narcotics business?

A Well, Mr. Duke, since I didn't know it for a aact that Mr. Fabre had been in the narcotics business --

Q Mr. Lipsky, I asked you a question. Will you

please answer my question. Did you tell federal agents that Mr. Fabre had been in the narcotics business?

A To the best of my recollection, I told them that I thought Mr. Fabre or I had heard conversations that he had once been in the narcotics business.

Q Didn't you in fact tell them who, according to your information, Mr. Fabre worked for in the narcotics business?

A I think I told them who he worked with.

Q Do you recall approximately when you told the federal authorities this information?

A I believe it was at the beginning of my debriefings or interrogation back at the very beginning, in March or April of '72, after I was first picked up by the Nassau County people, March 2, 1972.

Q He hasn't been indicted,has he, so far as you know?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q When did you first meet Susan Weyl?

A I heard her name through someone who you mentioned here this morning, another man, and then I met her --

Q When did you actually meet her?

A I am trying to think when I actually met her. Some time in 19 -- I am trying to think if it was -- I think it was in early 1971, some time around the spring of '71,

I believe.

Q Didn't she come visit you when you lived with Bennie Fabre?

A I was living with Bennie Fabre and he may have brought her home one night.

Q Did she come visit you when you were living there?

A Mr. Duke, she never came to visit me when I was living with Bennie Fabre. If she came there at all she came there to visit him, not me.

Q Were you there when she came?

A It is hard for me to remember if I ever did see Susan Weyl in Mr. Fabre's apartment. I think I did, but I can't be sure. I can't recall exactly.

Q Did you live with Susan Weyl at 5 East -- was it 9th Avenue? What is the address?

A It is 55 East 9th Street, Mr. Duke.

Q Didn't you live with her at that address in 1971?

A No, Mr. Duke, I never lived there, I never slept t there.

Q What is your probation officer's name?

MR. LAVIN: Objection.

THE COURT: Sustained. I call your attention to Rule 32(c)2. You may look it up when you get an

opportunity.

Q Mr. Lipsky, did you tell your probation officer that you were living with Susan Weyl at 55 East 9th Street?

MR. LAVIN: Objection.

THE COURT: You may answer that yes or no.

A Yes.

Q When in point of time did you make that statement?

A To my probation officer?

Q Yes.

A When I first met him, shortly after I first met him.

Q Can you give us a month and year?

A I think it was in January. No. Let's see.

When I was placed on probation was October 28th, '71. So I think it was either in November -- no. Let's see.

I am a little confused on these dates. I had my probation switched from Miami to New York and I was placed --

THE COURT: All he wants is a date, not a lot of detail.

Q If we can narrow it down, was it during the period April '71 through March 2, 1972? Was it some time during that period that you made the statement to the probation

officer?

A Yes, I believe so.

Q Within that period can you narrow it down any more? Was it in 1971 or 1972?

A The tail end of '71, the last two months, I believe.

Q During the period that you testified about your narcotics activities did you ever take Susan Weyl out on dates?

A During the period that I was working as a narcotics worker?

Q Yes.

A I think I took her to the Hippopotamus one night.

Q More than one?

A I think I took her there once. I know I took her there once.

Q Did I understand you to testify, Mr. Lipsky, that the narcotics and the paraphernalia were moved from Third Avenue, 1420 Third Avenue, to 55 East 9th Street because Mr. Pacelli wanted to do Susan Weyl a favor and he was concerned about your not being near the stuff? Is that a fair characterization?

A Both those statements you made are true.

Q Those are the reasons for the move, as far as

you know?

A To do her a favor and to get me away from living with the goods.

Q Isn't it a fact, Mr. Lipsky, that you asked Susan Weyl to permit you to keep the stuff there as a favor to you because you had trouble with your probation officer?

A I am confused with your question, Mr. Duke. You are asking me if I asked Susan Weyl if I could keep the stuff there?

Q Because you were having trouble with your probation officer.

A Well, that's not a true statement, Mr. Duke. I never had trouble with a probation officer.

Q Did you tell Miss Weyl anything in that connection?

A I told Miss Weyl something about my probation officer.

Q Did you ask her to permit you to move the stuff there?

A No, I don't believe I ever asked her.

Q Are you quite sure you didn't ever ask her?

A I was told, Mr. Duke, to move --

Q Can you answer my question, Mr. Lipsky? Did you ask her?

MR. LAVIN: I think he is trying to answer the question, your Honor.

THE COURT: I think he answered the question. He can answer it again.

A You mean did I initially ask her?

THE COURT: That is what he is asking you, how did it come about.

THE WITNESS: Did I initiate the conversation?

Q Did you ask her, just ask her could you move your stuff over there? Did you make a request of Susan Weyl to let you use the apartment that she lived in?

A Not exactly, Mr. Duke. It wasn't like that.

Q Was it approximately like that?

A No, not at all.

Q Did you have any conversation with her in connection with moving your goods to her apartment?

A Yes, I did have a conversation -- conversations with her about moving the goods and the equipment to her apartment, but I did not initiate the conversations with her.

Q In that connection, did you tell her that you having trouble with your probation officer and that was the reason you wanted to make the move?

A I told her things about my proba .on officer so that I would tell my probation officer that I was living in her apartment, and if he called or came by or sent a letter, that she would say yes, I am living there with her.

Q Is it your testimony, Mr. Lipsky, that what you told her about your probation officer was totally unrelated to your moving the goods from Third Avenue to 9th Street?

MR. LAVIN: Objection to the form of the question.

THE COURT: Sustained as to form. I think that we ought to be able to get at the problem a little more simply than this.

Q Were you instrumental in getting Miss Weyl to become agovernment witness? Is it Wheel or Weyl?

A Weyl.

Q Were you instrumental or did you play any part in getting her to be a government witness?

A You mean did I talk to her and ask her to become a government witness?

Q Did you have anything to do with it? Did you take any action or participate in any way with her decision to become a government witness?

MR. LAVIN: Objection to the form of the question.

THE COURT: In the interest of saving time, we will let him answer it if he can.

The form of the question is objectionable but I think we should shorten this if we can.

A When I was asked about activities, Susan Weyl's name came up, and I provided the information about Susan Weyl and how her apartment was used and by whom, and that's all I ever did concerning Susan Weyl.

THE COURT: He wants to know now whether you invited her or counselled her or confirmed to her that she ought to become a government witness.

A Sir, you mean did I actually ever speak to her about being a government witness?

THE COURT: Yes.

A I have never spoken to Susan Weyl and she's never spoken to me since previous to March 2, 1972.

THE COURT: So you didn't ask her to become a government witness?

THE WITNESS: No, sir, I did not.

THE COURT: You didnt' advise her to become a government witness?

THE WITNESS: In no way whatsoever.

THE COURT: You didn't discuss with her becoming a government witness?

THE WITNESS: No, sir.

THE COURT: All right. Now I think we have had that.

Q Did you tell the government you thought she would cooperate?

MR. LAVIN: Objection.

THE COURT: I think that we have gone as far as is necessary on that point, Mr. Duke.

Q Did I understand you to say you hadn't seen Miss Weyl since March 2, 1972?

A I didn't say that, Mr. Duke. I just told his Honor that I have never spoken to Miss Weyl and she has never spoken to me.

Q Have you seen her since that date?

A I have seen portions of her.

Q You have never spoken to her since that date?

A That's true.

Q Have you discussed her testimony with any federal authorities since that date?

A Her testimony?

Q Yes.

MR.LAVIN: Objection, your Honor. You may answer the question, if you know.

THE COURT: Did you review any testimony that she gave in any case in which she may have given testimony if she did, with any government agent?

THE WITNESS: I may have, sir.

THE COURT: All right.

Q What is your best recollection?

A I just answered the question, Mr. Duke. I may have.

Q I don't understand, Mr. Lipsky, what you mean when you say I may have. Could you be more specific? Is it your recollection that you did or you didn't?

MR. LAVIN: Objection

THE COURT: You may answer as best you can whether or not something stands out in your mind to indicate to you that the subject of any testimony that Susan Weyl may have given

at some other time and some other place -- certainly she hasn't testified in this case -- whether you ever discussed that with a government agent?

THE WITNESS: Government -- I think I can answer you, Mr. Duke. Government agents have asked me about certain things about Miss Weyl's apartment, and my connection to them; and I have given them answers.

THE COURT: No, no. He is talking about something specific. Did they ever go over any court testimony that she ever gave?

THE WITNESS: Minutes?

THE COURT: No, just did they ever raise the subject with you and say to you that Susan Weyl had given testimony in some case and then discussed it with you.

THE WITNESS: No, sir.

Q Do you know whether or not she has become a government witness?

MR. LAVIN: Objection, your Honor.

THE COURT: Sustained.

Q Did you supply her with cocaine?

A Did I supply her with cocaine?

Q Yes.

A I gave her some cocaine and --

Q That's enough. You answered the question.

A All right.

Q Do you know whether or not she's been indicted?

MR. LAVIN: Objection.

THE COURT: I think I am going to sustain that objection and I call to your attention the side bar meeting.

Q Mr. Lipsky, when did you use Miss Weyl's apartment as a stash?

A When?

Q Yes. What months, what years.

A 1971, roughly November, roughly November, December, and possibly part of January of '72. November, December of '71 and possibly January of '72 to the best of my recollection.

Q Couldn't have been in the summertime of 1971?

A You mean July or August?

Q Yes.

A I don't believe so.

Q Are you sure that it wasn't in August?

A I don't think it was in August, Mr. Duke.

Q Your testimony is that it could have been?

MR. LAVIN: Objection to the form of the question, sustained.

Q Mr. Lipsky, you know Ricky Cavalla?

A Who?

Q Ricky Cavalla? Or Cavallas.

A I don't know anybody by the name of Cavalla or Cavallas.

Q Do you have a friend named Ricky?

A I know a man named Ricky.

Q What is his last name?

A I think it is Cravera.

Q Did you testify in a trial before Judge Ward in July --

MR. LAVIN: Objection.

Q -- of 1971 --

THE COURT: Overruled.

Q -- in this court house?

A July of 1971?

Q Yes. 1973, excuse me, July of this year.

A I think it was the end of July, beginning of August; or the end ofJune, beginning of July, yes.

Q Last summer,this courthouse?

A This past summer, yes.

Q Was this one of the three trials in which you now admit having given false testimony?

MR. LAVIN: I object to the form of the question.

THE COURT: Sustained.

Q Did you give false testimony in that trial?

A Judge Ward's trial?

Q Yes.

A Not to my knowledge, I did not.

Q Did you testify as follows at page 670?

MR. LAVIN: Would you mark that, please, whatever it is?

MR. DUKE: It is a transcript. May I have it marked?

(Defendants' Exhibit F was marked for identification.)

Q Referring to Defendants' Exhibit F for identification, were you asked this question and did you give --

A Excuse me, what trial was this, sir?

Q This is the trial before Judge Ward last summer in this courthouse.

A Right.

Q Were you asked this question and did you give this answer "And isn't it a fact, Mr. Lipsky, that as a part of the deal which you made for yourself, you received probation in return for your agreement not to testify if called by your co-defendants in that case? Isn't that correct?"

MR. LAVIN: Objection, if your Honor please.

Q Your answer "No, that is incorrect."

THE COURT: This is the Florida trial?

MR. DUKE: The reference is to that.

THE COURT: All right. He said no, that's not correct. Go ahead. He has denied it. Now, what is the question?

Q Were you asked that question and did you give that answer in the trial before Judge Ward?

A May I see that question, sir?

Q Certainly.

(Document handed to witness.)

Q Were you asked that question and did you give that answer?

A Yes, sir.

Q Was that testimony true or false, your answer to that question?

A I am a little confused as to that question.

THE COURT: Was your answer correct? That's all he wants to know, yes or no. Do you stand by that answer or was it incorrect?

THE WITNESS: Would you mind readin that again, please.

Q This is in connection with your probation in Florida.

THE COURT: This is in connection with the Florida case?

MR.DUKE: The Florida case, yes.

THE COURT: That had to do with securities;

is that right?

MR. DUKE: Yes, the securities case down in Florida in which Mr. Lipsky received probation.

Q "Q And isn't it a fact, Mr. Lipsky, that as part of the deal which you made for yourself,you received probation in return for your agreement not to testify if called by your co-defendants in that case? Isn't that correct?

"A No, that is incorrect."

THE COURT: He wants to know do you stand by that answer or do you want to change it?

THE WITNESS: Yes, your Honor, I stand by that answer.

THE COURT: He stands by the answer.

I believe that covers one of the items on Court's Exhibit 3.

Q Isn't it a fact, Mr. Lipsky, that you made a deal in Florida not to testify because your truthful testimony would contradict the testimony of the other government witness?

MR. LAVIN: Objection. We have gone into this.

THE COURT: No, he may -- it is really the same question but he may ask it in this form.

THE WITNESS: Mr. Duke --

THE COURT: He wants to know whether you had such a deal as described in that question.

THE WITNESS: Yes, your Honor, but Mr. Duke just said --

THE COURT: Are you saying yes to me in answer to that question, or are you just saying --

THE WITNESS: No, I am saying to you Mr. Duke just said to me "the other government witness," categorizing me as a government witness in that trial. He just said "the other government witness."

THE COURT: Now you have got me confused.

THE WITNESS: I was a defendant.

THE COURT: You better take it over, Mr. Duke.

MR. DUKE: Mr. Lipsky is correct. I will rephrase the question.

Q Isn't it a fact thatyou made a deal in Florida not to testify because your truthful testimony would contradict the testimony of the government witness?

A No, Mr. Duke, that is not why.

THE COURT: All right. Now stop there. All right.

Q Did Mr. Betz ask you to testify for the government in that securities fraud case in Florida?

A Mr. Duke, I don't recall Mr. BEtz asking me to

testify for the government. Mr. Betz said some things to me such as "We know what happened here and you better tell us what happened and make it easy on yourself."

And I told Mr. Betz, "I'm sorry, I don't know what you are talking about."

Q You did come to an understanding involving a plea of guilty and a probation of one year, did you not?

MR. LAVIN: Objection.

THE COURT: We have been all through that and we are not going to go over it again.

Q Isn't it a fact, Mr. Lipsky, that subsequent to your testimony in this trial before Judge Ward, you discussed the specific question and answer that I just asked you about on page 670 of the transcript, Exhibit F, you discussed that specific testimony with your attorney, Mr. Gwinn, subsequent to your testifying.

THE COURT: You know, this -- a conversation between the witness and his attorney is a privileged conversation, and the witness is privileged to claim that privilege. Furthermore, it being a collateral matter, you are precluded by the answer of the witness; it being collateral to what the issue is in this trial.

Q Mr. Lipsky, I believe you testified, did you not, that when you met Mr. Pacelli, or shortly after you met him,

he told you something but you did the right thing down in Florida. Is that your testimony?

A Thatis correct, Mr. Duke.

Q And he was referring to what you did with respect to the legal proceedings in connection with that securities fraud case, was he not?

A You are referring to what I did?

Q When you testified about Mr. Pacelli telling you that you did the right thing in the case down in Florida, he was talking about what you did in connection with the legal proceedings?

A Yes.

Q Did you understand him to be referring to the fact that you participated in a frame in that case?

A A frame, Mr. Duke?

Q Yes.

A I dont know what you mean by a frame.

Q You don't know what a frame is?

A I know what a frame is but that isn't what Mr. Pacelli meant when he said I did the right thing down there in Florida.

Q You are quite sure that isn't what he meant?

A I'm very sure that isn't what he meant.

Q Did he mean that--

THE COURT: Wait a minute, what Mr. Pacelli meant is not for this witness to say. What he said is a different thing.

Q Did you understand him to mean that, by his reference to you did the right thing, that you had protected your friend Ricky and let innocent people go to jail in the Florida case?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Mr. Lipsky, you have an understanding, you have a promise from the United States Government, do you not, thatyou will not be prosecuted by the United States Government for anything at all; isn't that correct?

A That is not exactly the way it is, Mr. Duke. I have been told by an Assistant United States Attorney that the indictment, narcotics indictment in this courthouse, criminal indictment that I am still under, that I won't be prosecuted on that; and that also any information that I have given these past almost 22 months and would continue to give if I am asked, I would not be prosecuted as a defendant on any other information that I would have given or will give to the U.S. Attorneys or the agents.

THE COURT: Mrs. Rosner's note is Court's Exhibit 4.

(Court's Exhibit 4 was marked .)

Q So anything you tell the government about, your understanding is you will not be prosecuted for, concerning anything you tell the government about?

A No, Mr. Duke, you just asked me that and I thought I qualifed it and said that involving narcotics, which I knew something about, that I would not be prosecuted for anything I tell the government and have told them previously, and the one indictment I am still under indictment on in this courthouse, that I wouldn't be prosecuted on that indictment.

Q You have no understanding with respect to the possibility of being prosecuted for income tax evasion, for example.

Q Is that your testimony?

A I have never --know my testimony is, Mr. Duke, that I have never been talked to by anyone in this courthouse at any length whatsoever about being prosecuted by the government for income tax fraud or evasion or non-payment or whatever you call it.

Q Is your sworn testimony that the only promises that have been made to you have to do with your not being indicted for narcotics charges?

THE COURT: He did not say that, Mr. Duke. He is not talking about not being indicted at all. He is already indicted.

Q Not being prosecuted.

A No, Mr. Duke, Mr. Gwinn, who represented me, as I told you either this morning or this afternoon, or yesterday, if I spoke with you yesterday some time, that Mr. Gwinn, who represented me when Mr. Betz and two Internal Revenue inspectors came to see me in the jail, Mr. Gwinn told me on the telephone before they arrived there, "Barry, you can talk to these people. Mr. Betz is interested in hearing what you have to say."

Q Let me rephrase the auestion. Don't you have a promise from the government dating back to April, 1972 to the effect that you will not be prosecuted by the United States Government for any information that comes out of your mouth?

MR. LAVIN: Objection.

Q Can you answer that yes or no?

THE COURT: You may answer that.

A That's sort of correct, Mr. Duke.

Q In what respect is it incorrect?

MR. LAVIN: Objection.

THE COURT: Overruled.

A I have never been told by anyone in this courthouse about the income tax problem, but my attorney I believe has some time of understanding with the U. S. Attorney's office in Miami, Florida that I would not be prosecuted or I may not be prosecuted on the income tax fraud, evasion, whatever you might call it, in Florida, and as I have just said here about three times, that I would not be -- Mr.Duke -- I would not be further prosecuted on the indictment that I was indicted on on the case that came up in June of '72 in this courthouse, a criminal indictment on narcotics.

MR. DUKE: One moment, please, your Honor.

(Pause.)

(Court's Exhibit 4 marked.)

MR. DUKE: Your Honor, I am looking for a document about a quarter of an inch thick that I had the clerk mark after the lunch hour.

That is not it.

THE COURT: See if this is what you mean.

MR. DUKE: That's it, your Honor.

This is separate. Will you mark this one

separately?

(Defendant's Exhibit G marked for identification.)

BY MR. DUKE:

Q Mr. Lipsky, I am going to hand you Defendant's Exhibit G for identification and I am going to ask you some questions and you can look at that document and see if it refreshes your recollection as we go along.

MR. LAVIN: Would you identify it,please, for the record.

MR. DUKE: It is Exhibit G.

Q Would you take a look at page 21, Mr. Lipsky?

MR. LAVIN: Excuse me. Exhibit G? What is it?

MR. DUKE: Exhibit G is labeled "Tape Conversation Re: Barry Lipsky."

THE COURT: Now, please, I don't want you to do that.

MR. DUKE: I am sorry. Mr. Lavin requested it.

THE COURT: I understand you are sorry but you should not do it. That is Exhibit G for identification and that is the only information that is before us. The content of it is not evidence, either the

description of it or anything else. You may look at it.

BY MR. DUKE:

Q First, Mr. Lipsky, would you look at the middle of page 20, at the date there.

A Yes, okay.

Q Just at the date.

A Yes.

Q Now turning to page 21, near the bottom of the page, would you look there.

A Yes.

Q And also near the top, from about an inch and a half down.

A Yes.

Q Will you read to yourself the questions and answers there. Just read to yourself.

MR. LAVIN: I object to this, your Honor. I don't see the basis for having him read it.

THE COURT: Objection overruled.

Read it. Do what he asked you to do. Just look at it.

A You want me to read it all?

THE COURT: To yourself.

A The whole page?

THE COURT: An inch and a half down from the top and down near the bottom of page 21.

Q From an inch and half down to about three or four inches down.

A All right.

Q All right?

A One moment, please.

(Pause.)

A All right.

Q All right, Mr. Lipsky, were you present in this courthouse on April 11, 1972 in the office of Mr. Feffer?

A I believe so, sir.

Q Was there a phone call, a phone conversation, in your presence between Mr. Feffer and your attorney, Mr. Gwinn?

MR. LAVIN: Objection.

THE COURT: Well, did you talk on any phone yourself?

THE WITNESS: At that time, your Honor?

THE COURT: Yes.

THE WITNESS: Yes.

THE COURT: Did you participate? Were you on the telephone at any time so that you knew who the

person was at the other end?

THE WITNESS: Yes, sir.

THE COURT: All right. Now he wants to know was it a phone call in which a Mr. Feffer and a Mr. Gwinn were involved.

THE WITNESS: Yes, your Honor, it was.

BY MR. DUKE:

Q And Mr. Feffer was an assistant United States attorney for the Southern District of New York, was he not?

A That's correct.

Q And Mr. Gwinn was your attorney?

A That's correct.

Q And you overheard Mr. Feffer's side of the conversation, did you not?

A Yes, in part, yes.

Q And you had a conversation at that same time while you were in Mr. Feffer's office? You had a conversation yourself with Mr. Gwinn, did you not?

A On the same, yes.

Q On the same telephone?

A Correct.

Q Now I ask you whether or not you heard Mr. Feffer tell Mr. Gwinn --

THE COURT: Please don't read from anything or purport to read from anything so as to give any impression that what you are stating appears on the page that is not in evidence. Step away from the paper and ask your question.

Q Would you state whether or not Mr. Feffer told Mr. Gwinn on April 11th --

MR. LAVIN: Objection.

THE COURT: Wait a minute.

Q -- 1972 that you would not be prosecuted at all for anything, in words or substance? Did you hear Mr. Feffer tell your attorney,Mr. Gwinn, that?

THE COURT: Did you hear that or anything like that?

A I got on the --

THE COURT: No, no. The question is, as a person sitting in the room,did you hear Mr. Feffer make such a statement?

THE WITNESS: To be perfectly honest, your Honor, I heard Mr. Feffer speaking to my attorney, Mr. Gwinn, and I heard him saying some things concerning me. I don't honestly recall him saying those words into the telephone -- into the telephone.

THE COURT: All right.

THE WITNESS: There were other people in the room. There was other talking going on. I know Mr. Feffer was talking to Mr. Gwinn.

THE COURT: All right.

BY MR. DUKE:

Q What did Mr. Feffer tell Mr. Gwinn with respect to the government's intentions --

THE COURT: Now, just a minute.

Did you hear Mr.Feffer say anything with respect to some subject? What was it? What subject are you trying to elicit?

Q Did you hear Mr. Feffer say anything to Mr. Goodwin concerning the government's intentions regarding prosecution of you, Barry Lipsky?

A I heard pieces of his conversation which was only half of the conversation that I heard, Mr. Feffer talking into the phone. I of course didn't hear the reply.

Q But did you hear everything Mr. Feffer said?

A Not everything. I heard some of the things Mr. Feffer said.

Q What did he say, if anything, concerning the government's intentions --

MR. LAVIN: Objection.

Q -- with respect to --

THE COURT: Was there anything that you overheard regarding the government's intentions?

THE WITNESS: I gathered from the phone call that Mr. Feffer spoke into the phone to Mr. Gwinn and then that I was not going to be prosecuted on a matter that I was telling Mr. Feffer about in detail in his office involving narcotics.

Q Did you then get on the phone and did Mr. Gwinn tell you anything concerning whether or not you would be prosecuted?

A Yes, Mr. Gwinn told me some things.

Q Did he tell you anything about a promise --

A May I look at this?

Q Certainly.

MR. LAVIN: I object to this.

Q Look at the bottom of page 21.

THE COURT: There is nothing that's been marked in evidence and the paper that you have before you is merely to help you refresh your recollection, if you have any recollection, on the subject, and you are not being asked now to read or vouch for anything that is on that paper because the paper is not in evidence.

THE WITNESS: All right.

THE COURT: What Mr. Duke properly asks you is, following the talk that Feffer had, as you described it, did you get on the telephone and did Gwinn then tell you anything about promises of the government with respect to the narcotics or any other matter.

THE WITNESS: Yes, your Honor, he did.

THE COURT: He wants to know what he said.

THE WITNESS: Mr. Gwinn -- I got on the phone with my attorney, Mr. Gwinn, and Mr. Gwinn said that they weren't going to prosecute me on the case that I was telling Mr. Feffer about.

Q Didn't he tell you that he had Mr. Feffer's unqualified promise that if you talked to the agents they would not prosecute you? Didn't Mr. Gwinn tell you that?

A I don't remember Mr. Gwinn saying it to me in those words, an unqualified promise, just like you said it, but as I just said to you the first time, Mr. Gwinn did say to me that Mr. Feffer told him that they wouldn't prosecute me on this case that I was telling them about, which was the first case that I started.

Q Did you have a conversation with Mr. Gwinn concerning whether or not the government could be trusted to keep their promise?

MR. LAVIN: I don't see the relevancy of that, your Honor, what Mr. Gwinn said.

THE COURT: Yes, I think that that is remote. Sustained.

BY MR. DUKE:

Q Now,Mr. Lipsky, if you would look over page 25, middle of the page.

A Yes.

Q Did Mr. Gwinn tell you anything about a special contract?

A The whole page Mr. --

Q Middle of the page.

MR. LAVIN: Same objection.

THE COURT: Again, what Mr. Lavin is saying, and correctly saying, that you are not being asked to testify what's on the page. None of us know what's on the page, and at this moment none of us care, other than to ask you whether there is something on there that helps your memory so that you can answer the questions involved. This paper is not being offered to you as evidence. It's offered to you as an assist to help your recollection.

THE WITNESS: May I take a minute to look at it?

THE COURT: Yes.

Q The middle of the page, Mr. Lipsky.

THE COURT: When you are through looking at it, put it down and get Mr. Duke's question.

Q Did Mr. Gwinn tell you something about a verbal contract?

A I believe he said that to me, Mr. Duke.

Q Did he tell you that you had a verbal contract with the government?

A I don't know if he said I had a verbal contract with the government or that he had a verbal contract with the government.

Q Did he say that there was a verbal contract concerning you and the government?

A Did he say that?

Q Yes.

A Yes, he did.

Q Mr. Lipsky, would you look at page 23, about six lines from the bottom?

A Yes.

Q Would you read that to yourself, that two-line sentence?

A Yes.

Q Does that refresh your recollection as to who-

ther or not you heard the entire conversation on Mr. Feffer's end of the phone call between Mr. Feffer and Gwinn?

A Yes, as to what I said to Mr. Gwinn.

Q Would you explain that, please?

MR. LAVIN: Objection.

THE COURT: No. Explain that.

A Mr. Gwinn asked me if I heard the conversation that he had with Mr. Feffer. I said I heard Mr. Feffer speaking, and I heard most of what he said -- Mr. Feffer said -- to Mr. Gwinn.

Q Didn't you tell Mr. Gwinn that you heard the entire conversation?

A Yes, I think I said that.

Q That wasn't true?

A Yes, it was true.

Q Would you look at the middle of page 26, Mr. Lipsky, slightly above the middle of the page.

A Yes.

Q Would you read about four lines or five lines.

A Middle of the page?

Q Yes.

A Yes, all right.

Q Did Mr. Gwinn tell you again on that same phone conversation about the terms of the verbal contract that he said there was with the government?

A The terms, Mr. Duke?

Q Yes.

A I don't quite know what you mean by the terms.

Q Did he tell you what the promise of the government was that he characterized as a verbal contract?

A Well, just as --

MR. LAVIN: I object, your Honor, to this whole line.

THE COURT: He wants to know whether Gwinn told youwhat the government had told him.

THE WITNESS: Yes, your Honor.

A I think I just said that to you before, Mr. Duke, that I wouldn't be prosecuted on that case.

Q Didn't Mr. Gwinn tell you that they are not going to prosecute you for whatever else that you tell them?

A And you wanted me to jog my memory by reading that page to the question you just asked me?

Q Yes, page 26.

THE COURT: It gets down to this: were you

told that no matter what you had done at any time in your lifetime you weren't going to be prosecuted or were you being told that the things that you were relating were being related under an understanding that they wouldn't seek to indict you for the things that you were telling them about.

THE WITNESS: That's correct, your Honor.

THE COURT: Which is correct?

THE WITNESS: What I was telling them about, what I had told them slightly about, Mr. Feffer and others, and what I would tell them about narcotics activities which they were concerned about, that I wouldn't be prosecuted ror saying it.

THE COURT: You wouldn't be prosecuted for your part in it, is that what you are saying?

THE WITNESS: That's what I am saying.

THE COURT: All right.

Q But Mr. Gwinn didn't tell you that your verbal contract was limited to narcotics information, did he?

MR. LAVIN: Objection.

THE COURT: I think we should get at it, as to what Mr. Gwinn told him.

You may answer that. Did he say that this arrangement was limited to narcotics or was it to be on

any subject that you might talk about?

THE WITNESS: I don't recall,your Honor, if Mr. Gwinn went into detail with me on the phone. It's been some time since these conversations.

THE COURT: You were talking about narcotics at that time?

THE WITNESS: Yes, in this courthouse.

THE COURT: Feffer was talking about narcotics?

THE WITNESS: Yes, sir.

THE COURT: Gwinn was talking about narcotics?

THE WITNESS: Correct.

THE COURT: And the conversation back and forth on the telephone had to do with the narcotics disclosures, is that about right?

THE WITNESS: All about the narcotics disclosures and one other thing.

THE COURT: What was the other thing?

MR. DUKE: Objection,your Honor.

THE COURT: All right. That is a proper objection.

Q Didn't Mr. Gwinn tell you that that verbal contract covered any damn thing that you gave information about?

A He may have said that, Mr. Duke.

Q He did say that, didn't he?

MR. LAVIN: Objection, your Honor.

THE COURT: No. He may answer.

Did he say that?

A Well, Mr. Duke, I want to be --

THE COURT: He is asking you whether you recall the specific language. It was any damn thing that y ou told them about.

THE WITNESS: That Mr. Gwinn wanted me not to ge prosecuted on.

THE COURT: Yes.

A Yes. I think, to the best of my recollection, Mr. Duke, that that's what Mr. Gwinn wanted the government to tell him for me.

Q That is what Mr. Gwinn as your attorney told you that he had a verbal contract with the government about, is it not?

MR. LAVIN: Objection to the form of the question, your Honor. I think there is a little confusion in the witness' answer.

THE COURT: See if you can answer that question. Did Gwinn say to you that he had an understanding, not in writing, but in words, that you wouldn't be

prosecuted for the things that you were telling the government about?

A Yes, I believe Mr. Gwinn told me that, if not in this paper and relating to these conversations on the phone with Mr. Feffer, at some later time, that I was told by Mr. Gwinn, my attorney at the time, that I would not be prosecuted for any narcotics information that I would supply to the government.

Q Mr. Lipsky, I am not talking about narcotics information. You testified on direct about your understanding about narcotics information. I am trying to understand and get from you whether you had an arrangement with the government concerning every bit of information that you gave.

I ask you again, didn't Mr. Gwinn tell you that you had a verbal contract with the government they are not going to prosecute you for anything you tell them about any damn thing? Did Mr. Gwinn tell you that on April 11th or did he not?

THE COURT: Are you excluding the subject we discussed at the side bar or are you opening the door to that inquiry also?

MR. DUKE: I don't think it has anything to do with that subject, your Honor.

THE COURT: I think that your question is very broad. I would suggest to you in fairness that you ought to take it in easier steps instead of in the form in which you are proceeding, so that there can't be any misunderstanding and some advertence as a result of it.

MR. MITCHELL: Your Honor, could we have a recess at this time?

THE COURT: Yes. I think it's been quite warm all afternoon. We don't seem to be able to be able to regulate the heat very well. Suppose we take a 10-minute recess.

(Jury left the courtroom)

THE COURT: Mr. Duke, in the absence of the jury let me tell you what I am disturbed about.

The compass of your question is such as to raise the whole Nassau problem. I don't know what was discussed with Feffer, but if anything was discussed with Feffer that drew in the Nassau Problem, and you ask this witness whether or not he was to be absolved from anything that he ever told them, you are raising that matter specifically and you are opening the door.

I am suggesting to you in fairness to the representation of Mr. Pacelli's interests that you should do that consciously and knowingly if you intend to do it, you can do it as far as I am concerned, but I am telling you what appears to me to be the effect of asking these broadside questions.

Now again, I leave it to you to make your own decisions and your own trial strategy. But the question is broad enough so as to bring in that other subject which all of us have tried to avoid bringing into this trial. If you are going to do it inadvertently this is notice to you that you will be doing it inadvertently if you continue asking that specific form of question.

All right. We are in recess.

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(Recess.)

THE COURT: Mr. Duke, in the absence of the jury and the absence of the witness, did you have an application?

MR. DUKE: Yes, your Honor. In view of your Honor's remarks prior to the recess concerning the line of inquiry I would like to state briefly on the record the proposed further line of inquiry along this line.

I have in this exhibit that I was questioning Mr. Lipsky about -- I believe it is G -- a statement by Mr. Feffer to Mr. Gwinn, again made in the presence and the hearing of Mr. Lipsky, in which Mr. Feffer says to Mr. Gwinn "I can categorically state to you that any information that he gives as to this case or any other case that he makes he will be used only as a witness only and never be brought to trial for any information that comes out of his mouth, this case or any other case."

Mr. Gwinn responds "In other words, we are talking about a contract to complete transactional immunity, is what you are saying."

Then Mr. Gwinn tells Mr. Lipsky they have promised me that they will give you complete transactional immunity."

I intended to ask Mr. Lipsky those statements, which

I think I am entitled to ask in view of his statements on direct examination and on cross with respect to the extent of the promises that have been made to him, and I think I am entitled to ask those questions without opening up any inquiry into the Patsy Parks affair, in which Mr. Pacelli was allegedly involved with Mr. Lipsky.

In view of your Honor's remarks, however, I obviously can't ask those questions,and I therefore would renew my motion for severance.

THE COURT: You are quite wrong. You can obviously ask those questions and in the presence of your client and in your presence I am telling you that whatever the consequences are of your asking those questions, they are being asked advertently. I will permit you to ask those questions. I am not now passing upon proper redirect examination.

Bring in the witness and the jury.

Before the jury comes in let me say that I have already permitted you to cover the line of your offer of proof set forth in Court's Exhibit 3 so far as your first point is concerned and I have no objection to your going into the second area if there is any basis therefor in fact and the inquiry is a genuine one, in good faith, with evidence which would authorize going into it, namely,whether

Lipsky falsely swore to a grand jury that one identifying himself as Pual McGauchy gave him the stolen stock to sell.

So that both of the subjects that you raised and offered to prove in your offer of proof I now rule to be admissible. One of them you have already covered and the other one you may at your pleasure cover.

All right, bring in the witness and the jury.

(Jury present.)

MR.DUKE: May I proceed, your Honor?

THE COURT: Yes, please go ahead.

BY MR. DUKE:

Q Mr. Lipsky, you testified yesterday, didn't you, that you testified before the federal grand jury in the Southern District of Florida on May 7th that a person identifying himself to you as Paul McGauchy gave you the stocks which you subsequently sold, is that correct?

A Yes, sir, I believe that is correct.

Q That testimony was false, was it not?

A That a person named Paul McGauchy gave me those stocks?

Q Or a person identifying himself as such to you.

A Well, no, sir. The stocks were sold in the name of -- in that name.

Q You knew the person that brought the stock to you, did you not?

A Yes, sir.

Q And it was not Paul McGauchy, was it?

A No, sir.

Q So that testimony was false, was it not?

A That testimony to the grand jury?

Q Yes.

A That is correct.

Q Now again on April 11, 1972, Mr. Lipsky, do you recall, after your conversation with your attorney, did you thereafter?

A I am sorry you said my attorney Mr. Who?

Q I didn't say. Your attorney Mr. Gwinn and Mr. Feffer, the conversation that we were talking about earlier, did you thereafter that afternoon testify before a federal grand jury?

A That same afternoon?

Q Yes.

A I may have, Mr. Duke. I don't recall if I testified that afternoon. I may have.

Q I show you Exhibit 3525. Would you look at the date on that?

A Just the date?

Q Yes. Well, the first line or two. Look at the part that is underlined too.

A Yes, sir.

Q You testified to the grand jury that same afternoon?

A Yes, sir.

Q Were you examined by Mr. Feffer in front of the grand jury?

A Yes, sir.

Q I ask you if you were asked this question and gave this answer:

"Q Do you understand that anything you say here can be used against you in a court of law?

"A Yes, sir."

Were you asked that question and did you give that answer?

A Yes, sir.

Q Did Mr. Feffer also ask you this question and did you give this answer to that federal grand jury:

"Q I should also advise you that because of anything that you say or do not say here, there is always a possibility that this grand jury may decide to indict you. Do you understand that?

"A Yes, sir, I do."

Were you asked that question and did you give that answer?

A If that's from the same grand jury transcript.

Q Sorry;I forgot to show it to you.

(Paper handed to witness.)

A I was asked that question and I made that answer, Mr. Duke.

Q And you were under oath?

A Yes, sir.

Q I'd like to show you Exhibit No. 3513. Would you look at the part right there?

A This paragraph?

Q Yes, and the date.

A Yes.

Q Didyou make a sworn statement in March of 1973 to Special Agent David Samuel in the presence of Special Agent Joseph Lore in this courthouse?

A I don't know if I made the statement in this courthouse. I may have. It may have been at another office. I'md not sure where. Does it say where I made the statement?

Q Yes, it does. I show it to you.

A I am sorry I didn't look.

Q I didn't show it to you. Right there (handing to

witness).

A Yes, sir, all right.

Q You made that sworn statement in this courthouse to both federal agents?

A That is correct.

Q In that sworn statement, did you state I understand that if I decide to answer any questions or make any statements, they can and will be used against me in a court of law or any other judicial proceeding.

Did you make that statement?

A Did I make that statement?

Q Yes.

A Did I write that?

Q Well, I will ask you if you recognize 3513 is a copy of your sworn statement?

A I didn't write this out, Mr. Duke, this part you are referring to.

Q Did you read it and sign it?

A Well, this one isn't signed. I believe I signed some statements. This is one of them.

Q Did you sign an original of which that is a copy?

A I believe I did and the rights were written above my statement, I believe.

Q You read and signed the original of that statement,

did you not?

A I believe so, about the activities of this person.

Q What I just read you, is in that statement, is it not, what I just read you and asked you about?

A Well, I don't know Mr. Duke, seeing as my signature is not on that statement. I am not hedging with you but I don't know if my -- if --

Q You don't know if you signed the original?

A I signed a lot of statements for these agents, I don't know if that's an exact copy of the one that I signed.

MR. DUKE: May I have a government representation on this?

MR. LAVIN: Ask the witness, please, Mr. Duke.

Q Mr. Lipsky, on that date on which you made a sworn statement; did your sworn statement contain the statement "I am making thisstatement freely and voluntarily without being subjected to any duress or any promises being made on my behalf ."

Didyou make that statement to those agents on that date?

A Mr. Duke, when you say made that statement, I didn't say those words. All that material was typed in above statements that I gave to these agents. I signed the

original of whatever -- the copies of the reports and statements they asked me to sign.

When they had them copied over, the lines about the rights and promises made to me were typed in above what I signed.

Q You read it and signed it?

A I believe so.

MR. LAVIN: It was signed, for Mr. Duke's edification.

Q Will you accept the government's representation that this doc-ment that I showed you, 3513, is a duplicate of an original which you signed?

A Yes, sir, I believe so.

Q And you read it before you signed it?

A Yes, sir, skimmed over it.

Q Were those statements true, Mr. Lipsky?

A The statements, all those -- the statement you just showed me?

Q Yes, the statements that I asked you about.

THE COURT: You botter be definite because you have asked about many, many statements.

Q Well, 3513.

THE COURT: Please, are you referring to the preamble or are you referring to the body?

MR. DUKE: I am referring your Honor, and Mr. Lipsky, to the portions of those statements which I asked you about.

THE COURT: Now read those statements so that there won't be any confusion about what you are talking about.

MR. DUKE: All right. "I understand that I have the right to remain silent. I understand that if I decide to answer any questions or make any statements, they can and will be used against me in a court of law or any other judicial proceeding. I am making this statement freely and voluntarily without being subjected to any duress or any promises being made on my behalf."

Were those statements true, Mr. Lipsky?

A Yes, Mr. Duke.

Q No promises were made to you prior to March of 1973?

A Yes, Mr. Duke, the ones that I have told you about, where I was told, as I have just related just before recess, about that I wouldn't be prosecuted on the narcotics case involving Mr. Feffer, and any other narcotics activities that I would tell the agents or the U.S. Attorneys, as I just told you prior --

Q All right, you don't have to make a speech. I just asked you a simple question.

Mr. Lipsky, did you testify in a trial in June of

1972 in this courthouse?

A Yes, sir.

Q Were you under oath in that case? Did you take the same oath there as you took here?

A Yes, sir.

Q That was before a jury?

A Sorry, before a jury?

Q Yes.

A Yes.

Q Were you asked this question and did you give this answer, Page 53 of 72 Cr. 1319, "With respect to the charges here today, that is, this case where you were a defendant, has anybody in the United States Attorney's office made any promises to you about what might happen if you testified" and did you answer "No, sir"?

A Yes, sir, I believe I testified that way.

Q Were you asked these questions and did you give these asnwers:

"Q No promises have been made to you?

"A Promises, sir?

"Q Yes.

"A You mean -- I don't know exactly what you mean by promises.

"Q You were promised that you would not be prosecuted for the subject matter to which you testified.

"A I can answer that best by saying that --

"Q I'd like to have a yes or no answer.

"A Can I hear the question again?

"Q The question is, did anybody say to you, 'Mr. Lipsky'-- did anybody say to you in words or substance, 'Mr. Lipsky, if you testify in this case,why nothing's going to happen to you, you're going to be okay'?

"A No one has ever said exactly that to me, sir.

"Q Has Mr. Feffer ever made any promises to you that if you testified you would not be prosecuted, that you would not go to trial, you would not have to plead guilty in respect to that which you testified about?

"A I don't quite understand exactly what you saying to me.

"Q Did Mr. Feffer ever say to you that 'You have a deal, Mr. Lipsky, if you testify we are not going to prosecute you'?

"A I have never been told by anybody in the United States Attorney's office that I have a deal.

"Q Do youknow if your attorney has been told by anybody that you have a deal?

"A No, I do not know if my attorney has been told that.

"Q Your attorney is Mr. Walter Gwinn of Miami?

"A That's correct.

"Q Did Mr. Feffer ever say to you that you would receive very favorable treatment if you testified here today?

"A He never said that in those words, sir.

"Q Do you know if Mr. Feffer ever said to you or to your attorney, Mr. Gwinn, in Miami that while you would be indicted in this case, that your case would be severed and that you would never be tried, that you would never go to trial?

"A No, sir. I have no knowledge of

any conversations of that type.

"Q Were you ever told by your attorney, Mr. Gwinn,in the presence of Mr. Feffer, that there was a verbal contract between the government and your lawyer and that you would never be tried?

"A No, sir."

Did you give those answers? Were you asked those questions and did you give those answers in December, 1972?

A Mr. Duke I think you first started saying June, '72 in this case.

Q I am sorry. Were those questions and answers in a case in December of 1972?

A I think they were, sir.

Q Trial before Judge Gagliardi?

A Yes.

Q Were you asked those questions and did you give those answers under oath in a trial in this courthouse?

A I did.

Q Were those statements truthful?

A The statements I made?

Q The answers to the questions that you were asked.

A No, they weren't.

Q Now, with respect to the trial in June you testified --

THE COURT: June of what year?

Q June of 1972 -- you testified in a trial of June of 1972, didyou not?

A Yes, sir, you just asked me that.

Q Yes, but as well as one in December?

A '72?

Q Yes.

A Yes.

Q That was in this courthouse as well?

A That's correct.

Q And that was in front of a jury?

A Yes, sir.

Q And did you take the same oath there that you took here?

A Yes, sir.

Q Were you asked -- reading from page 369 of 72 Cr. 664, were you asked by Mr. Feffer:

"Q Mr. Lipsky, have any promises of any type been made to you from any governmental authority, federal, state, local, with respect to your testimony here in court today?

"A On this case, sir?

"Q Yes.

"A None whatsoever, sir. Nothing whatsoever has been promised or told me in any way whatsoever at all."

Page 370, question again by Mr. Feffer:

"Q Do you expect to receive any favorable treatment in any way, shape or form from your testimony here today?

"A I have no way of knowing that, sir. I know I am indicted, on trial here for doing what is allegedly I have done."

And then did you further state, on page 371:

"I do not expect to receive any favorable treatment for doing what I have done by tesyifying here. I am testifying here to try and help myself in other matters"?

Did you give that testimony? Were you asked those questions and did you give those answers?

A Yes, I did.

Q Was that testimony truthful?

A The last sentence, the last sentence was truthful.

Q Was partof that testimony untruthful?

A Yes, sir.

Q Mr. Lipsky, during the trial in December of 1972 when you were asked the questions and gave the answers, the untruthfulness of your testimony was exposed, was it not?

MR. LAVIN: Objection to the form of the question.

THE COURT: Sustained.

Q Was the untruthfulness of your testimony made known to the court?

MR. LAVIN: I object to the form of the question.

THE COURT: I think that I will sustain the objection as to form only.

Q Was information tendered to the court subsequent to your testimony in that December, 1972 trial.

THE COURT: The proper way to ask the question, if you want to get at it, is "Were you present at any time or was there, with your knowledge, information conveyed to the court?" Otherwise you are asking him about activities of other persons when he wasn't present or participating.

Q Did it come to your attention, Mr. Lipsky, during the course of that trial that certain information relating to the truth or falsity of your testimony was

made available, made known to the court?

A Yes, sir, I heard something happened.

Q Did you hear that a mistrial was declared as a result of your false testimony?

MR. LAVIN: Objection on the ground of relevance, your Honor.

THE COURT: Sustained.

Q Did you subsequently write a letter to the chief of the Criminal Division on December 22, 1972, about that mistrial, among other things?

A I told you about that letter earlier, Mr. Duke.

Q Yes, but we didn't go into the contents of it. Was that the subject matter of the letter.

A About that case?

Q Yes.

A Yes, it was.

Q Did you tell Mr. Morvillo in a letter that you sent to him dated December 22, 1972 that you were in a terrible mental state? Did you tell him that?

THE COURT: Is that letter in evidence?

MR. DUKE: No, your Honor.

THE COURT: You are calling for the contents of something that is not in evidence.

MR. DUKE: I am asking him questions about certain portions of the letter, your Honor.

THE COURT: In other words, you would like to have him tell you about the contents of something not in evidence.

MR. DUKE: Yes, part of the contents of it.

Withdrawn.

Q Mr. Lipsky, as you sit before this court and this jury you have not to date been prosecuted for any of the various criminal acts that you testified about having committed in Florida other than the one stock transaction, is that correct?

A That's correct.

Q And you haven't paid any income tax since 1971?

THE COURT: Ithink we have been over that, Mr. Duke.

Q Mr. Lipsky, were you also engaged in the shylocking business down in Florida?

A I wasn't actually engaged in it. These two other men were and they came to me and asked me if I knew someone who wanted to borrow money from them for a certain percentage a week and I knew such a person and they made a loan or two loans, one or two loans, to this one individual, and I received absolutely nothing for arranging for this loan.

Q Haven't you testified that you were engaged in the shylocking business?

A That's just exactly what I told you. That's what shylocking is called, I believe.

Q And you haven't been prosecuted for making any false statements to agents of the United States Government, have you?

A Youmean --

MR. LAVIN: Objection, your Honor. I don't believe there is such a thing.

THE COURT: He wants to know whether you have been prosecuted for perjury or false swearing. Have you been prosecuted? It's a simple question. Yes or no.

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THE WITNESS: No, your Honor.

THE COURT: All right.

Q You haven't been prosecuted for perjury at all, ever, have you?

A No, Mr. Duke.

Q And you don't expect to be either, do you?

A I have no way to know if I am going to be prosecuted for perjury, Mr. Duke. I have no way to know.

Q You don't expect to be, do you?

A I would hope not to be prosecuted.

Q Can you answer my question? Do you expect to be or don't you?

A I don't expect to be, sir.

Q Mr. Lipsky, you have never been examined by a psychiatrist on behalf of any defendants in any criminal case, have you?

MR. LAVIN: Objection, your Honor.

THE COURT: Sustained.

MR. DUKE: I have no further questions, your Honor.

THE COURT: All right. Who is next on the cross examination list?

MRS. ROSNER: I believe I am next in the

order of examination, your Honor.

THE COURT: We will start tomorrow at 10 o'clock sharp.

MRS. ROSNER: Thank you, Judge.

THE COURT: Ladies and gentlemen, we are now in recess until tomorrow morning. Please keep an open mind on this case. Wait until you have heard all of the evidence in the case. Please be careful in going to and from the courthouse and to your homes. Good night.

(The jury left the courtroom.)

THE COURT: The Exhibit D for identification were Mr. Lavin's notes. The notes consist of two parts. One part is the public testimony of Mr. Lipsky at a prior trial. That certainly does not constitute 3500 material because that is in the possession of the defendants and available to the defendants.

On the other hand, Mr. Lavin has interleafed these pages in that testimony as his roadmap, apparently, of examination of the witness,and I have marked it Exhibit D1. I don't believe that this is technically within the rule, the 3500 rule. On the other hand, in the interests of excessive disclosure, if there be any such thing, I am going to suggest that the government consent

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to Mr. Lavin's notes being examined by counsel, which I have now identified separately as Exhibit D1.

Have you any objection to it really?

MR. LAVIN: Your Honor, the only thing is I wouldn't want anybody cross examining Lipsky on the basis of what I have written because it is not a verbatim statement.

THE COURT: I agree that it is not 3500 material, and I am not permitting this thing to start the wrong kind of examination, but I think that the defendants should have the feeling that there has been a total disclosure, and in the interests of fairness and justice in that regard, without the requirement of legal obligation, I am suggesting that this be turned over.

MR. LAVIN: I have no objection, just as long as they don't make fun of my spelling.

THE COURT: I have marked it separately. You will just have to take care of holding on to your own papers.

MR. MITCHELL: Your Honor, just one thing. I have asked Mr. Peluso and my defendant, if I am about five or ten minutes late tomorrow I don't want to hold up the court --

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THE COURT: In other words, Mr. Peluso is going to fill in for you for five or ten minutes or so?

MR. MITCHELL: That's right.

THE COURT: Is that satisfactory, Mr. Peluso?

MR. PELUSO: Yes, Judge.

THE COURT: Is that satisfactory to Mr. Barrett?

DEFENDANT BARRETT: Yes.

THE COURT: All right. Permission granted.

MR. MITCHELL: Thank you.

(Defendant's Exhibit D1 was marked for identification.)

(Adjourned to December 21, 1973, at 10:00 a.m.)

United States of America

v. 73 Cr. 881

Benjamin Mallah, et al.

New York, December 21, 1973
10:00 a.m.

(Trial resumed.)

- - -

(In the robing room.)

THE COURT: Yesterday, we had marked for identification Exhibit B, a letter of December 11, 1973, to Mr. Lavin, and reference was made in that to a request for any and all statements made by Lipsky to his probation officer concerning, inter alis, his occupation, place of above --

MR. DUKE: Misprint, your Honor, should be abode.

THE COURT: Abode?

MR. DUKE: Yes.

THE COURT: -- abode and associated during the period April 1971 to February 1972. In an effort to assist in running down anything of this character, I communicated with the probation officer in this building who is assigned to Mr. Lipsky, and was advised unequivocally, that at no time did he have any discussions or obtain any statements from Mr. Lipsky in respect of any matter relating to narcotics.

That was not his function. I requested to know whether he had any probation report which might cover anything on the subject of narcotics by way of statement from Mr. Lipsky; and he told me that he had no such report but that he did have the probation report prepared in Florida.

I examined that report this morning, and I found therein a section labelled defendants' version of the offense, which I have now reproduced in full by Xerox copy and will mark as a Court's Exhibit 5, which I am not clear of at the moment whether this constitutes procurable 3500 material, or whether in fact it relates to 3500 obligations. Certainly twhe government is not in possession of this because probation reports are not available to the government from the probation department unless released by the Judge, and there is no indication that this was ever released to the government.

However, so there won't be any mystery about it, and since it is a quoted statement given by Lipsky as defendant in that Florida prosecution, I will mark it, and disclose it ot the government and to counsel for the defendant as part of these proceedings.

The other matter that I recall that was left open yesterday was that a search should be made for a letter from Lipsky to Feffer, Correct?

MR. LAVIN: Yes, your Honor.

THE COURT: What is the story on that?

MR. LAVIN: I spoke to Mr. Feffer last night. He didn't recall such a letter. He thought there might have been. He instructed me to look in his files. I did so last night and I found what I believe must be the letter that Mr. Lipsky sent to Mr. Feffer dated December 6, 1972.

THE COURT: Has there been any testimony in this case about Yellowfingers No. 2?

MR. LAVIN: Yes, I believe there has, your Honor, the Aponte-Lugo-Pacelli-Perez matter.

THE COURT: This goes into the manslaughter prosecution or murder prosecution, whatever you want to call it; and Mr. Gary Betz is in here and the Internal Revenue Service. Was that brought out on direct? Well, it was brought out on cross anyway.

MR. [illegible]: This is a subject that is clearly not part of this case or any aspect of it.

[illegible]: There is a very touching love story in here which I don't think is part of anybody's business. It has nothing to do with this.

I think that there are some things in here that are arguable matter that may in some way relate, even if only remotely, to the subject of his direct examination,

but I think that something should be done to redact this document to take out the advice to the lovelorn, so to speak.

MR. LAVIN: I have prepare a redacted copy, your Honor. He mentions a girl's name in there. I have taken that out wherever it appears. I have taken out -- there is a lot of background about the girl. I have taken all that out. I have taken out everything about the girl as far as her location, where she lives, who she is, and what she is.

I would ask that --

THE COURT: She is not a defendant or a co-conspirator?

MR. LAVIN: No, she is not, your Honor. The government doesn't consider this either Brady material or 3500 material for this or any other case in which Mr. Lipsky has testified but since we have it and since it is here the government would ask that that unredacted letter be marked as acourt's exhibit, and we would ask that this be marked as 3576. We will mark this 3576, 3500 material, even though we don't consider it as such, or Brady material.

THE COURT: I am not going to argue with you if you want to have the 3500 material. The only question then for me is to see whether what you have taken out -- I think all the matter that I referred to appears in one particular

section.

I see you left enough in so as to indicate the subject matter.

MR. LAVIN: Yes, your Honor, so there won't be any confusion about it.

THE COURT: This part on page 4, except as you have already recited it, and even to the extent that you have recited it, and all of page 5, has to do with this young lady, and all of page 6, you have a blank page in here for 5 and for 6.

I think that this is a fair editing. Mark the original Court Exhibit 6. This will be sealed.

(Court Exhibit 6 was marked.)

THE COURT: Mark this Xerox 3576. It would be my ruling that 3576 is not 3500 material but in view of the consent of the government to its disclosure, 3576 may be turned over to the defendants for their perusal.

Have you got other copies?

MR. LAVIN: That is the only one I have.

THE COURT: All right. I will send my clerk out and we will get other copies.

How many copies do you need?

MR. DUKE: Five.

MRS. ROSNER: Your Honor, yesterday counsel filed

a memorandum in support of an application to be permitted to cross examine the witness Lipsky concerning his participation in the homicide on the grounds that it showed that it bore both on his competency as a witness because of the extremely gory, almost inherently insane conduct involved, and secondly, because it showed how much consideration was extended to him in allowing him to plead guilty to manslaughter, and in having him sentenced to an indeterminate term with no minimum whatsoever, which makes him parolable immediately.

I think the jury is entitled to know his participation at the very least in the offense, so as to fully appreciate the consideration that was extended to him.

I was wondering if your Honor would care to rule on that before counsel begins cross examination today.

THE COURT: I will.

MR. DUKE: Your Honor, in that connection --

THE COURT: Let's not go into anything unless you want to add to it.

MR. DUKE: It is related to this.

THE COURT: Go ahead.

MR. DUKE: I prepared a brief handwritten statement to hand up to the Court in the event this issue came up, and this has to do with the possibility that the

Court may feel that cross examination by me on Mr. Pacelli's behalf may have constituted some waiver of prejudice inquiring into details of the whom said which would reveal or tend to reveal Lipsky's version of the identity of his companion, and I think I would, rather than hand it up, I should just briefly summarize it, and that is that the same lines of inquiry that I undertook on cross were taken in 72-664, 72-1319, 73 Criminal 441, and the trial before Judge Ward, the number of which I don't know, by other counsel in cross examining Lipsky, and in none of those cases did Lipsky testify to the identity of his alleged accomplice.

I'd just like to state that my inquiry concerning the promise that was made to Mr. Lipsky on April 11th by Mr. Feffer was directly related to Mr. Lipsky's testimony on direct to the effect that he only had been made promises with respect to narcotics cases, and I inquired in that to show, A --

THE COURT: He didn't say that. He didn't say that. You pressed him. You are now abridging his testimony.

MR. DUKE: I think he left that impression with the jury, and that was clearly not the arrangement he made, and in any event, the conversations between Mr. Feffer , Mr. Gwin and Mr. Lipsky on February 11th do not relate to the homicide

and the identity.

THE COURT: How do you know that?

MR. DUKE: I have read the transcript.

THE COURT: Of the conversations?

MR. DUKE: The conversations between Mr. Lipsky, Mr. Feffer, and Mr. Gwinn on February 11th.

THE COURT: Thatis not what I am talking about. You were pressing him as to all the matters that he was going to and did disclose to Mr. Feffer, and whether he had gotten absolution of all those matters, and if you are in the slightest doubt as to whether that would have opened the door, I am going to correct that doubt for you, because I would have ruled that if the matter had been proceeded with any further, that you had opened the door for the government to bringout all of the details of the discussion; and that would have promptly put you in a position where I think that you would have presented something that your client might have been hurt by.

I don't think I want to go into that any further because you haven't pressed it by a new question. As I have said, from here on you know the position that the Court may take on it,and it can't be said any longer it was an inadvertent inclusion. You didn't even refer to federal offenses in your inquiries.

Now let us leave that alone. I am not going to get into that any further. You have my ruling on the subject.

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MRS. ROSNER: May I make one thing clear in connection with our application? This present application does not ask the court for permission to reveal the identify of Lipsky's accomplice inthe murder. That is a line of inquiry which I understand your Honor has precluded us from following. It merely would elicit from his his own participation, his own acts, your Honor. I would remind the court most respectfully that in cross examination of a co-conspirator, especially, the utmost latitude should be accorded counsel.

THE COURT: Bearing in mind the rule of law that you have mentioned, and having read every single case that you have presented, I am convinced that the scope of the cross examination on this subject is within the sound control and discretion of the trial judge to avoid any attempt by cross examination either to enhance the effect of a conviction or to minimize it where that may result in undue prejudice in the case.

The cross examiners may inquire into the name of the crime committed, the time and place of the conviction, the punishment, if any, awarded, and any probation or other consideration involved. There may be other items that I am not at the moment precluding, but those are the ones that I think -- this means that the cross

examiner may not probe in depth on the details of the felony, the aggravating circumstance or the name of the victim.

In making this ruling I adhere to the uniform holdings of the Second Circuit that is followed by almost every other circuit, and as announced also by the text writers, Wigmore and McCormick.

MRS. ROSNER: I just want the record to be clear, your Honor, that we do not seek to elicit this matter for impeachment value, but to show and to have the jury understand the nature of the consideration extended to him, and to show the witness' own competency to testify.

THE COURT: That is just a back-handed way of getting at what I would consider to be mischievious and prejudicial effect with no proper basis on the attack of credibility or truthfulness under the present circumstances.

I think that the witness can be shown to be both a convicted person and a felon and the name of his crime and the punishment awarded and the consideration given in order to achieve all of the legal effects possible without at the same time going into the brinksmanship which would either advertently or inadvertently result

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in unfair prejudice to somebody in the trial.

MRS. ROSNER: Your Honor, we have no intention in the light of your Honor's ruling of eliciting the fact of Mr. Pacelli's participation and without that I don't see how this information could prejudice anyone but the witness himself, which is a valued consideration and counsel is entitled to do that and entitled to show this man for what he is.

THE COURT: Allmright.

MR. MITCHELL: Your Honor, may I have an exception on behalf of the defendant Barrett because my position is that if the witness Lipsky is discredited to the point where the jury may not believe him, he will be, as was in the other case and more so in this case, he will be the only connection between a conspiracy which we referred to as a Pacelli conspiracy and the conspiracy which we referred to as a Sperling conspiracy.

THE COURT: I don't know what you are saying. What question would you want to ask so that I have very clearly what you are posing to me? These pleasant discussions arewhat cause the trouble when a case gets up on appeal because nobody understands what the other fellow was really saying.

MR. MITCHELL: I take the position that

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Mrs. Rosner's request is a proper one and, as your Honor stated, we are to take individual exceptions, yesterday you told us that.

THE COURT: Yes.

MR. MITCHELL: So I am taking an exception. I am also stating the reason. Otherwise I would have written it out.

THE COURT: What proposed question would you put on cross examination in furtherance of your exception?

MR. MITCHELL: The details -- I would want to go into the details of the killing.

THE COURT: Meaning what specifically?

MR. MITCHELL: When he threw a match, so on and so forth, whether he was instrumental in bringing the deceased so that she could be killed, and all the circumstances.

THE COURT: Has anybody else got any specific things that they'd like to bring out?

MR. LA ROSSA: I join in the objection.

MRS. ROSNER: So that the record is clear, your Honor, the conduct which I would elicit would be the fact that knowing of the intention to kill this girl, Mr. Lipsky brought her, drove her to the scene of

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the crime, although himself did not physically kill her, after she was dead he doused her body with gasoline and lit a match to it. I think that is the extent of his participation, and I think that it bears on his state of mind.

THE COURT: As to what?

MRS. ROSNER: As to his competency to be a witness. I think it reflects on his sanity, Judge, and I think it is something the jury is entitled to know and it certainly shows the jury that this man got a plum when he got an indeterminate sentence in state court.

THE COURT: It shows nothing of the kind because you don't know the circumstances under which sentencing occurred and weren't there, and you have no way --

MRS. ROSNER: We have the transcript, your Honor.

THE COURT: We have no way of evaluating it.

MRS. ROSNER: I have the transcript.

THE COURT: I am not going to play God about any other judge's sentence.

MRS. ROSNER: Your Honor, we are certainly entitled to know --

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THE COURT: You have the ruling and you can take it from there.

MRS. ROSNER: Your Honor made one comment I would like to respond to. I certainly have no first-hand knowledge of what went on at the sentencing but I have seen a court reporter's copy of what went on at the sentence and it was through the participation of the federal government, specifically the participation of Mr. Phillips, the head of the Narcotics Unit, that this man received the clemency that he did.

THE COURT: How does that affect his truthfulness?

MRS. ROSNER: It shows his bias and motive which has always been held to bear on truthfulness. This man is indebted for his very life to the federal government.

MR. LAVIN: Your Honor, may I respond to that?

THE COURT: Yes.

MR. LAVIN: I read that transcript and Mr. Phillips did what every assistant United States attorney does. He told the court that Mr. Lipsky had cooperated with the government, and he went into few details about it. That's all he did, and he stood up in front of

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the court there. They have the record.

THE COURT: I will have no objection and in the light of this you may offer what Mr. Phillips did, if you think that it bears out what you have in mind, and argue from it, but that does not entitle you to go into the other areas which your own brief acknowledges would be a mischievious excursion.

MRS. ROSNER: I do not acknowledge that, your Honor.

THE COURT: That is what I rule, anyhow.

MR. PELUSO: Judge, I join in that application.

THE COURT: All right.

MR. LAVIN: Mr.Lipsky is here. He is on his way up.

MRS. ROSNER: May counsel just have a moment to read the matter which is being Xeroxed before we examine, your Honor?

THE COURT: Yes.

MRS. ROSNER: I think I am first to examine this morning.

THE COURT: That material that I sent downstairs will be up.

MR. DUKE: Your Honor, may I reserve the

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right to inquire on this document that is going to be produced?

THE COURT: I think you have already inquired on it. If there is anything new that this raises, why you call it to my attention. This is No. 3576. Everybody can put their number on. Why don't you all take a minute to examine that and as soon as you are through let me know and we will bring in the jury.

Court's Exhibit 6 is ordered sealed and will be placed in the vault in the clerk's office, Room 602.

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(In open court; jury present.)

B A R R Y L I P S K Y resumed.

THE COURT: Good morning, ladies and gentlemen. We found it necessary this morning to take up some legal matters and rather than delay the trial to take those up later we decided to clear up all of the problems first. That's the reason why, although everybody was prompt this morhing, again we started a little late. I am sorry.

All right.

MRS. ROSNER: May I proceed, your Honor?

THE COURT: Please.

CROSS EXAMINATION

BY MRS. ROSNER:

Q Good morning, Mr. Lipsky.

A Good morning, Mrs. Rosner.

Q You told Professor Duke yesterday about the conviction which you had --

THE COURT: Who did you say he was, Professor Duke?

MRS. ROSNER: Yes, your Honor.

THE COURT: Please just stick to the ordinary forms in this courtroom.

MRS ROSNER: I am sorry.

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THE COURT: No titles.

Q You told the jury that you committed perjury before a United States grand jury in Florida, is that right?

A That's right.

Q Approximately what month and year was that?

A I think I said yesterday it was May 7, 1969 or '70.

Q You ultimately pled guilty in that case, did you not?

A That's correct.

Q When was your plea of guilty with respect to your perjury, before or after?

A When did I plead guilty?

Q Yes, in that Florida case.

A After the grand jury, Mrs. Rosner.

Q It was after you committed perjury before the grand jury?

A That's correct.

Q And at the time you pled guilty you pled, did you not, to only one count or one charge in the indictment that was pending against you, isn't that correct?

MR. LAVIN: Your Honor, I think we went into

detail on this yesterday.

MR. ROSNER: I have a very brief point to make, your Honor, and Iwill only be a moment, with the court's indulgence.

Q Would you answer, Mr. Lipsky?

A May I hear the question again?

Q You pled guilty, did you not,to only one count or charge in the indictment which was pending against you?

A I believe that's right.

Q And you did so with the permission and consent of the United States Attorney's office, did you not?

A I believe that's correct.

Q In other words, you needed their consent, you couldn't do so without their permission, is that right?

A True.

Q And at the time you entered that plea the fact of your perjury before the grand jury had been revealed and discussed by your attorney and the assistant in charge of the case, isn't that right?

A Mrs. Rosner, I don't know what discussions were held between my attorney and the prosecuring assistant United States attorney. So I can't tell you

what they discussed.

Q You were aware, were you not, that there were some discussions between your attorney and the assistant in charge of the case in order to obtain that plea for you, isn't that correct?

MR. LAVIN: Objection, your Honor. Asked and answered.

THE COURT: Sustained.

Q Mr. Lipsky, in your own mind at the time you entered the plea in Florida you felt, did you not, that the government had done you a favor that the law did not require it to do in allowing you to enter that plea, did you not?

MR. LAVIN: Objection.

THE COURT: Sustained as to form.

Q In your own mind did you feel that the government had extended you consideration in allowing you to plead to only one count of the indictment?

MR. LAVIN: Asked and answered.

THE COURT: No. You may answer that.

A Did I feel the government extended me consideration?

Q Yes.

A In allowing me to plead to one count?

Q Yes.

A Rather than more than one count?

Q Yes.

A Yes, I believe so.

Q What did you do for the government, Mr. Lipsky, to entitle you to that plea?

MR. LAVIN: Objection to the form of the question.

THE COURT: Sustained.

Q What, if anything, did you do, Mr. Lipsky, for the government in order to get that plea for yourself?

A Nothing, Mrs. Rosner.

Q Nothing. You did not agree with the government, Mr. Lipsky, not to testify on behalf of co-defendants who were going to call you as a witness at their own trials?

MR. LAVIN: Objection. Asked and answered.

THE COURT: The objection is sustained on that and other grounds also.

Q Mr. Lipsky, after you entered the plea of guilty in that case --

THE COURT: Were you ever subpoenaed by any other defendant in that trial?

THE WITNESS: Yes, your Honor. I was a witness.

THE COURT: You were a witness?

THE WITNESS: I was placed on the stand under oath, your Honor, yes. I was subpoenaed as a witness.

THE COURT: Go ahead, Mrs. Rosner.

BY MRS. ROSNER:

Q You were subpoenaed by co-defendants, were you not, Mr. Lipsky?

A I believe I was subpoenaed by one co-defendant, as I understood it at the time.

Q Thank you, sir.

And you took the stand and you refused to testify, isn't that right?

MR. LAVIN: Objection.

THE COURT: You may answer.

A I did what my lawyer told me to do, Mrs. Rosner.

Q And was that to refuse to testify?

A No, not exactly, Mrs. Rosner. My attorney, Mr. Gwinn, told me to give my name and to other questions say I respectfully decline to answer the question on the grounds that I might tend to criminate myself.

Q When you did that, Mr. Lipsky, you didn't believe you could incriminate yourself, did you, you had already pled guilty?

MR. LAVIN: Objection, your Honor.

THE COURT: No. Did you believe that you could incriminate yourself, as adbised by your lawyer?

THE WITNESS: At that time, your Honor?

THE COURT: Yes.

THE WITNESS: It is difficult to recall, but I believe at that time that my attorney said that he was going to try and get me probation, and then the subpoena came up for this later trial for these other defendants and one of the other attorneys for one of these other defendants subpoenaed me down there and my attorney told me that I would be wise and I should take the Fifth Amendment.

Q Mr. Lipsky, in your own mind did you believe that there was some possibility of incriminating yourself after you had pled guilty to the very offense that was on trial?

MR. LAVIN: Objection.

THE COURT: He may answer it again.

Q In your mind, Mr. Lipsky, did you believe that?

THE COURT: Did you believe your lawyer when he told you --

MRS. ROSNER: That is not my question, your Honor.

THE COURT: I don't know what your question is.

MRS. ROSNER: I am asking whetherthe witness believed he could expose himself to any further prosecution after he had laready pled guilty to the very offense he was being called to testify about.

THE COURT: Isn't that a legal question?

MRS. ROSNER: No, your Honor, I don't think so. I think it goes to his state of mind.

THE COURT: It may be a legal question.

You may answer the question. What was your state of mind? Did you believe that regardless of what had happened before that you might incriminate yourself in some way which might affect your getting probation?

THE WITNESS: I don't believe at the time that I took the Fifth Amendment on that later trial when I was subpoenaed down there, your Honor, that my attorney had told me that I was going to get -- in other words, I had not pled guilty to the one charge, I don't believe,

at the time of that second trial to which I was subpoenaed.

THE COURT: I see.

Q Is it a fact, Mr. Lipsky, that you were not allowed to plead guilty until after you declined to testify on behalf of your co-defendants?

THE COURT: Mrs. Rosner, I think that you asked a series of questions with possibly the knowledge that you had that he had not pleaded guilty.

MRS. ROSNER: I did not have that knowledge, your Honor. I am being guided by the witness' answers.

THE COURT: I know, but you put questions to this witness as to what his state of mind was after he pleaded guilty. Now it turns out he had not pleaded, and you know that.

MRS. ROSNER: I did not know before the witness answered, your Honor. I am being guided by what he says to me.

THE COURT: All right, I accept that statement. Now go ahead and frame your questions accordingly. He says when he took the witness stand he had not yet pleaded.

Q Did the United States attorney tell you that

you would not be allowed to plead guilty until after the conclusion of the trials of your co-defendants?

A Did any United States attorney --

Q Anyone connected with the government, Mr. Lipsky.

A No one ever spoke with their mouth to me in that form on those questions you just said, those statements. No U. S. attorney ever conveyed that information to me by their mouth.

Q Did your attorney convey to you the sentiments of the United States attorney in that regard?

MR. LAVIN: Objection, your Honor.

THE COURT: Sustained. The jury is instrcted that whether or not a person pleads guilty is that person's own choice and there is no way in which a United States attorney can prevent a person from pleading guilty.

MRS. ROSNER: In light of your Honor's remarks to the jury may I put a further question.

Q You know, do you not, that without the consent of the United States attorney you could only plead guilty to the entire indictment? You know that, Mr. Lipsky, don't you?

THE COURT: That is not correct as a matter

of law and I rule that question out.

MRS.ROSNER: I disagree with your Honor.

THE COURT: What is that?

MRS. ROSNER: I most respectfully disagree with your Honor.

THE COURT: Thank you. Now go on with your next question.

BY MRS. ROSNER:

Q After you went --

THE COURT: The jury is instructed that where there are several counts a defendant is privileged to plead guilty at any time to any count, leaving the remaining counts open.

Go ahead.

Q After you entered your plea of guilty, Mr. Lipsky, you visited the probation authorities in the State of Florida, did you not?

A On that same day, Mrs. Rosner.

Q And you gave the probation authorities an account of your own participation in the crime for which you pled guilty, did you not?

A I don't recall -- I know I talked to this man -- Mr. Thomas I think his name was -- and he took some information from me. I don't know if he took down information

regarding the stock transaction.

Q Do you recollect telling him anything about your own participation in the crime for which you pled guilty?

A Mrs. Rosner, that's 1971. That's quite a long time ago. I talked to this man for about a half an hour or so, but I don't recall what he asked me or what I told him.

MRS. ROSNER: May we have this marked.

(Defendant's Exhibit I marked for identification.)

BY MRS. ROSNER:

Q Mr. Lipsky, I will show you what has been marked Exhibit I and ask you if that refreshes your recollection concerning statements you may have made to the probation authorities about your own participation in the offense to which you plead guilty.

A I read it, Mrs. Rosoff.

Q Does that document refresh your recollection concerning whether or not you told the probation officer about your own participation in that crime?

A Well, Mrs. Rosner, this just says "U. S. probation officer." It doesn't have a name on it, it's not in my handwriting.

Q Does it refresh your recollection, Mr. Lipsky?

A I may have said those things on that paper to that probation officer in Miami, Mr. Thomas. It refreshes my recollection to some extent.

Q It refreshes your recollection that you did make some statement, is that your testimony?

A Yes. But I did not type out that piece of paper.

Q Thank you, Mr. Lipsky.

You didn't decline to make any statement to the probation authorities, did you?

MR. LAVIN: Objection, your Honor.

Q Concerning what had transpired.

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Did you tell the probation officer that on reflecting on what you had done you were sure that you would never make an illegal move? Did youtell him that?

A I believe I may have said that to him.

Q In whatmonth and year were you placed on probation by the District Court in Florida?

A I believe it was October 28, 1971.

Q And in what month and year didyou begin your own unlawful narcotics activities here in New York?

A What do you mean, my own?

Q In what month and year did you begin trafficking in narcotics here in New York?

A Some time after Easter 1971.

Q And would it be fair to state that that is a period of maybe five months after you had been placed on probation, if I compute correctly?

A No, Mrs. Rosner.

Q Withdrawn.

How long was it between the time you were placed on probation and the time you came to New York and began trafficking in narcotics, how many months?

A I was in New York already, Mrs. Rosner, working in New York, when I went back to Florida to be placed on probation.

Q Thank you, Mr. Lipsky.

Had you already begun trafficking in narcotics when you were placed on probation by the Court in Florida?

A I believe so.

Q By the way, you came to New York and had your probation transferred here, did you not, after telling the Court that you were coming here to gain lawful employment, isn't that so?

A That is correct, Mrs. Rosner.

Q You also told Mr. Duke yesterday, did you not, that you had been convicted for the crime of manslaughter in Nassau County, isn't that right?

A That's right, Mrs. Rosner. I pled guilty.

Q You pled guilty to that offense. And prior to a plea of guilty to manslaughter you had been indicted, had you not, for the crime of murder?

A That is correct.

Q You were arrested for that offense, were you not, on March 2, 1972, or very shortly thereafter?

A Yes, ma'am. I answered all these questions yesterday.

Q Thank you, Mr. Lipsky.

After you are arrested on that charge of murder in your own mind you felt that you were in extremely serious

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trouble with the state authorites in Nassau County, isn't that right?

MR. LAVIN: Objection to the form of the question.

THE COURT: No. He may answer it. The form is bad, but he may answer it.

A Did I feel I was in extremely serious trouble with the people in Nassau County?

Q Yes.

A Of course.

Q And you felt, did you not, that you might spend the remainder of your natural life in jail for that offense?

A You mean the night that they picked me up?

Q After you made your statements out in Nassau County.

A No, I didn't think that. I didnot think that, what you said, that I might spend the rest of my natural life in jail, when I made those statements and shortly after I made those statements in Nassau County.

Q You didn't think that?

A No, ma'am, I didn't think that.

Q Did you think you might spend a very lengthy period of time incarcerated?

A No, I didn't think that either, Mrs. Rosner. I thought I was in some trouble.

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MR. DUKE: Object to the witness' volunteering non-responsive answers.

THE COURT: The objection is overruled.

Q Mr. Lipsky, after you made statements detailing your own participation in the murder for which you were indicted --

MR.LAVIN: Objection, your Honor.

Q -- didn't you feel that you might spend a very lengthy period of time incarcerated?

MR. LAVIN: Objection, asked and answered.

THE COURT: He may answer. Did you consider that you might have to spend a lengthy incarceration?

THE WITNESS: Yes, that crossed my mind, Mrs. Rosner.

Q It crossed your mind?

A It was in my mind.

Q More than once, didn't it, Mr. Lipsky?

A Yes, Mrs. Rosner. But if you are asking me why I made those statements --

MR. DUKE: Objection.

Q I did not ask you that, Mr. Lipsky.

MR. DUKE: Move to strike.

Q I am asking you what your own frame of mind was --

THE COURT: Motion denied.

Q -- in March 1972.

A You are asking me what my frame of mind was?

Q I am asking you what your thoughts were concerning the possibility of your incarceration for the rest of your life.

MR. LAVIN: Objection, asked and answered.

MR. DUKE: Object.

THE COURT: He may answer it once more and that will be the end.

A You are asking me if I thought I would spend the rest of my life in jail for making those statements?

Q And for everything else you had done, Mr. Lipsky?

A At what time, Mrs. Rosner? Just after I made the statements?

Q Mr. Lipsky, I will try to reput the question. I am sorry --

THE COURT: Just tell him the time that you are talking about so that we don't get repetitious.

MRS. ROSNER: I intended to do that, your Honor.

THE COURT: Just tell him the time, please, give him a date.

Q Focus your attention on the time after you were indicted for the crime of murder.

At that point in time -- was that March 1972?

A It was.

Q The latter part of March?

A The early part of March.

Q The early part of March. At thatpoint in time, when you learned you were indicted for murder, did you feel in your own mind that might very well spend the remainder of your nature life in mail?

A To be perfectly honest with you, Mrs. Rosner, I did not.

Q Do you remember writing a letter, which you referred to yesterday, to Assistant United States Attorney Feffer in December of 1972?

A Yes, I think I wrote a letter to Mr. Feffer.

Q You remember that?

A I said so yesterday.

Q Do you remember telling Mr. Feffer --

THE COURT: Please don't read from anything not in evidence.

MRS. ROSNER: May I have a moment then, your Honor.

(Pause.)

Q Do you remember telling Mr. Feffer in your letter to him of December 1972 that you were despondent because of thinking night and day about the problems of the prosectuion

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for murder out in Nassau County? Do you remember telling him that?

A I may have written him that in the letter.

Q Do you remember telling him that Mr. Cahn -- by the way, who is Mr. Cahn?

A The District Attorney of Nassau County.

Q He is the District Attorney, is that right?

A That's what I just said.

Q And Mr. Dillon, who is Mr. Dillon?

A An Assistant District Attorney in Nassau County who was handling the case.

Q He was in charge of your prosecution, is that right?

A That's right.

Q Do you remember telling Mr. Feffer that Mr. Cahn and Mr. Dillon and their lying policemen were going to get you 99 years? Do you remember telling him that?

A I don't recall saying it as you read it to me.

Q I am not reading it to you, Mr. Lipsky.

MRS. ROSNER: May we have this document marked.

(Defendants' Exhibit J was marked for identification.)

MR.LAVIN: It is marked already.

MRS. ROSNER: I am sorry.

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THE COURT: It's now marked Defendants' Exhibit J.

Q I show you this document, direct your attention to the portion bracketed in blank. Read that to yourself and see if it refreshes your recollection.

After having read that, Mr. Lipsky, is your recollection refreshed concerning what you told Mr. Feffer?

A Yes.

Q You did tell him those things, didn't you?

A I just said yes, Mrs. Ross.

Q No, you said your recollection was refreshed.

MR. LAVIN: Objection.

THE COURT: Objection overruled.

Q In December 1972 you were despondent with fear that you were going to spend the rest of your life in jail, isn't that right?

A I just told you yes, Mrs. Rosner.

Q And in March 1972, when you were indicted for the crime of murder, you were likewise despondent with fear that you were going to spend the rest of your natural life in jail, weren't you, Mr. Lipsky?

A Are you talking about the day I was indicted, Mrs. Rosner?

Q When you were indicted and after you were indicted.

A I was upset, Mrs. Rosner.

Q Shortly after you were indicted for that crime of murder, Mr. Lipsky, you began cooperating with the federal authorities, isn't that right?

A Are you saying shortly after I was indicted?

THE COURT: Yes, that's what she said.

MRS. ROSNER: Withdrawn.

Q At what point in time, Mr. Lipsky?

A At what point in time what?

Q If you recollect a day, tell the jury the day. At what point in time did you commence cooperating with the federal authorites?

A When I first met them, when Mr. Feffer and Mr. Updike came to Mr. Dillon's office in Nassau County Court House and started asking me some questions.

Q Thank you, Mr. Lipsky.

And that was after you had been arrested?

A After March 2nd.

Q After March 2nd, after you had been arrested in connection with the murder indictment, the murder case, isn't that right?

A Yes.

Q After your indictment you tried to help yourself in that case by moving to suppress the statements which you yourself had made, isn't that right?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q You turned to the federal government for help in connection with your prosecution for murder, did you not, Mr. Lipsky?

MR. LAVIN: Objection to the form of the question.

THE COURT: Overruled.

A When the federal people came to ask me questions either before or after the indictment, Mrs. Rosner, I told them whatever answers to questions they asked me.

Q That is not my question, Mr. Lipsky. I am sorry.

Did you seek the help of the federal government in any way in connection with the case pending against you in Nassau County?

MR. LAVIN: Objection to the form of the question.

THE COURT: Overruled.

A You mean did I go to the telephone and call up the federal people and ask them to --

THE COURT: No, no. When they came to you were they looking for help from the federal government on your Nassau case?

THE WITNESS: Well, to be completely honest, your Honor, they wouldn't even talk to me about the Nassau case. They just wanted to talk to me about narcotics activities

that I had here in New York area, New York City area, and they constantly said "We won't talk now with you about the Nassau County homicide case. We want to talk to you about narcotics activities."

Q Let me put another question, Mr. Lipsky. In your own mind did you desire the help of the federal government in connection with your murder prosectuion?

A Yes.

Q You felt, did you not, that the authorities in Nassau County were out to get you, didn't you?

A Yes.

Q And you felt that unaided by the federal government they might have well succeeded, isn't that right?

A You are probably right.

Q You felt that, didn't you?

A I felt that.

Q And you sought the help of the federal government in connection with your murder prosecution, didn't you?

A I am not sure what you mean by the word sought. They came to see me.

Q I will put a different question then.

MR. LAVIN: Objection, your Honor. Can he finish his answer, please?

THE COURT: I think so. You covered that sub-

ject.

This is just repetition.

Q Through your attorney you called as a witness on your behalf a federal agent to testify on your motion to suppress your own confessions, did you, Mr. Lipsky?

MR. LAVIN: Objection, your Honor.

THE COURT: Sustained.

Q Isn't it a fact, Mr. Lipsky, that you believe in your own mind that a federal agent took the stand?

MR. LAVIN: Objection.

Q And testified for you?

MR. LAVIN: Objection, your Honor.

THE COURT: Let her finish the question. If it is an improper question, I will deal with the question and anything else thatcomes up in connection with it.

Q Isn't it a fact, Mr. Lipsky, thatin your own mind as you sit here today testifying, you believe that a federal agent took the stand and testified on your behalf on your motion to suppress your confessions?

MR. LAVIN: Objection.

THE COURT: Objection sustained on the ground that the area has been sufficiently covered and to the extent that it is not covered, I will rule it out in my discretion.

MRS. ROSNER: Your Honor, you have precluded every question in that area.

THE COURT: Now, please, I don't want any comments from you.

Q It is a fact, is it not, Mr. Lipsky, that your attorney attempted on your behalf to negotiate some lesser plea of guilty than a plea to an indictment for murder?

A I believe that's a true statement.

Q And on his own, without the aid of the federal

government, he was unsuccessful in obtaining that plea; isn't that right?

MR. LAVIN: Objection.

THE COURT: Overruled.

A On his own without the aid of the federal government? I was in jail, Mrs. Rosner. I don't know what moves my attorney or phone calls or letters my attorney was making. He didn't tell me everything he was doing. I was in jail and he was in a removed state, far away, so I didn't get to speak to him on the phone. I only had -- was able to write to him and he wrote back to me.

Q You say you didn't know whether your attorney was unsuccessful in negotiating a plea for you, Mr. Lipsky?

MR. LAVIN: Objection, that wasn't his answer.

Q Do you recollect in your letter to Mr. Feffer, in December of 1972?

MR. LAVIN: Objection. I have an objection, Mrs. Rosner, to the question, the first question.

MR.ROSNER: I haven't put a question. I will withdraw the first question.

Q Do you recollect telling Mr. Feffer, in your letter to him of December 1972, that at the end of the suppression hearing, the judge asked the DA if he would like to have a conference?

mbbr 3 Lipsky-cross

MR. LAVIN: Objection, your Honor, to reading matters not in evidence.

THE COURT: I think that you have gone far enough in this recital; so as to indicate that the form of your question is objectionable.

MRS. ROSNER: I will try to put it again, your Honor.

THE COURT: Please shorten the question and make them specific so as to avoid these objections.

MRS. ROSNER: I will try to do that, Judge.

THE COURT: Now I have a memorandum here from Mr. Duke which I will mark as the next Court's exhibit. I am frank to say I am at a loss to understand its import.

(Court's Exhibit 7 was marked.)

Q On the basis of your knowledge of the efforts of your attorney to obtain a plea for you, Mr. Lipsky, I ask you whether you remember writing to Mr. Feffer in December of 1972 and telling him that the Judge had proposed a conference concerning a possible plea of guilty? Do you remember writing to him about that?

MR. LAVIN: Objection to the form of the question.

THE COURT: No, she may ask that question that way.

A I remember something about a Judge. There were

two Judges on the case. I was first in front of one Judge, and then another Judge got the case for some reason. I remember my attorney telling me that the Judge for for some type of conference. I remember hearing about a conference.

Q And do you remember writing to Mr. Feffer about that?

A Not right offhand I don't.

Q Do you remember telling Mr. Feffer in your letter to him that the District Attorney answered that his office is opposed to any conference or plea? Do you remember telling Mr. Feffer that?

A I may have told Mr. Feffer that. I don't recall telling him that.

Q Do you remember telling Mr. Feffer in that letter that to you this opposition was an indication of what they wanted to do with you out in Nassau County?

A Again I say, I may have conveyed my feelings along those lines to Mr. Feffer.

Q Do you remember telling Mr. Feffer that you wanted him to know that you appreciated all the efforts that he and Mr. Phillips and Mr. Morvillo and others in the United States Attorney's Office had undertake on your behalf?

A Yes, Mrs. Rosner.

Q Concerning the things which you did not recollect,

I showyou Defendants' Exhibit J. I will bracket a portion for you.

I ask you to look at it and see if that refreshes your recollection concerning the other things you may have said to Mr. Feffer.

A The whole page Mrs. Rosner?

Q The portion that is bracketed in black, Mr. Lipsky. You can read the whole page, ifyou like.

THE COURT: What is the page number?

THE WITNESS: 2.

Q Toward the middle of the page,Mr. Lipsky.

Does that document refresh your recollection, Mr. Lipsky?

A Yes, Mrs. Rosner.

Q Did you say those things?

A I did.

THE COURT: Say what things?

MRS. ROSNER: The questions previously put to witness --

THE COURT: Don't refer to some cross reference.

MRS. ROSNER: I was trying to shorten it.

THE COURT: Your efforts to shorten are appreciated but they ought to be made understandable also.

MRS. ROSNER: I will, your Honor.

Q Did you tell Mr. Feffer that the case against you looked like an open and shut case with you the loser, and that at the end of the suppression hearing, the Judge asked the DA if he would like to have a conference on the case prior to trial for a possible plea by you, and the District Attorney answered that his office is opposed -- underscored -- to any conference or plea, and that this was an indication to you of what they wanted to do with you out there in Nassau County, and did you tell Mr. Feffer that you watned him to know that you appreciated all the efforts that he and Mr. Phillips and Mr. Morvillo and all the others in his office had tried to effect on your behalf? Did you tell him that?

A That last part of that you just asked me before and I gave you a yes for an answer.

THE COURT: Just answer as to whether you told him all of those things.

A I did.

Q While you were incarcerated in the state jail -- I am sorry, I am not inquiring where you were, Mr. Lipsky -- while you were incarcerated in connection with the murder charge pending againstyou, therecame a time when you didn't find the conditions of your incarceration pleasant, isn't that right?

A That is correct.

Q And you asked the federal government to aid you in obtaining some of the amenities of life, isn't that right, Mr. Lipsky?

MR. LAVIN: Objection to the form of the question.

THE COURT: Sustained as to form.

Q Did you ask anyone connected with the federal government to help you to get a room by yourself?

A Yes, I think so.

Q Did you ask someone connected with the federal government to help you to get a television for yourself?

A I am sorry, could I add something to that last answer?

Q No, Mr. Lipsky.

A All right. Go ahead.

Q Did you ask someone connected with the federal government to help you to get a television for yourself?

A I believe I did.

Q That was done for you, wasn't it?

A It was done.

Q And a radio?

A It was done.

Q And to permit you to have contact visits with members of your family?

A At the jail, Mrs. Rosner?

Q At the court house, here.

A That's true.

Q That wasn't permitted out at the jail, was it, Mr. Lipsky?

A Only with attorneys.

Q You were brought to this court hosue specifically to permit you to visit and touch the members of your family which you couldn't do in Nassau County jail, isn't that right, Mr. Lipsky?

A That's incorrect as you asked it, Mrs. Rosner. I was brought down here on government business.

Q While you were here on government business you were permitted to visit with your family, weren't you?

A Yes, for a short period of time.

Q That is a privilege that you would not have been accorded as a state prisoner, isn't that right, Mr. Lipsky?

A That is correct, Mrs. Rosner.

Q And you are deeply grateful for everything the federal government has done for you, aren't you, Mr. Lipsky?

A I answered that question before, Mrs. Rosner.

Q The day came when you were sentenced on your plea of guilty to manslaughter in Nassau County; isn't that right, Mr. Lipsky?

A That is correct.

Q And on that day, your attorney accompanied you to Court, didn't he?

A Both attorneys, Mrs. Rosner.

Q And spoke on your behalf? Didn't he?

A One attorney spoke.

Q They weren't the only people who spoke on your behalf, were they, Mr. Lipsky?

A No, Mrs. Rosner.

Q Mr. Phillips spoke on your behalf also, didn't he, Mr. Lipsky?

A Yes.

Q Mr. Phillips is an Assistant United States Attorney in this office, isn't he, Mr. Lipsky?

A Yes.

Q Mr. Phillips told the Judge how you testified at a variety of trials on behalf of the federal government; didn't he, Mr. Lipsky?

A He did.

Q Did he tell the Judge in Nassau Country how you perjured yourself under oath at three trials in this court house?

A I don't recall him telling that to the Judge.

MRS. ROSNER: May we have this marked, please.

(Defendants' Exhibit K was marked for identification.)

Q I show you what's been marked Defendants' Exhibit K. You can peruse the portion beginning with Mr. Phillips and see if that refreshes your recollection.

A All these pages, Mrs. Rosner?

Q If you need them to refresh your recollection, Mr. Lipsky.

A You can ask me whatever you want.

Q Do you have a recollection?

A Of what?

Q As you sit here now whether Mr. Phillips told the Judge in Nassau County who was going to sentence you that you perjured yourself under oath on three occasions while testifying for the federal government?

A Mrs. Rosner, you just asked me that question and I answered you that I don't believe Mr. Phillips did inform the Judge.

Q Did he or didn't he ?

MR. LAVIN: Objection, your Honor.

Q You were there, weren't you, Mr. Lipsky?

THE COURT: All right. I think we have that sufficiently.

Next question.

Q Do you remember testifying in this court house during late June or early July of 1973?

A Yes, ma'am.

Q At the trial of Mr. Catino and Mr. Aquino before Judge Ward? I am sorry, Mr. De Franco.

A That is correct.

Q Do you remember in the course of that trial being asked questions by the Assistant United States Attorney who prosecuted that case?

A Yes.

MR. LAVIN: Your Honor, I object to this line of questioning.

THE COURT: We will ask the questions and counsel will adhere to the proprieties, I am sure.

Q Do you remember being asked about --

MR. DUKE: May we have a page number?

MRS. ROSNER: I am sorry, 721.

Q Withdrawn. The time when you were testifying on that trial, you believed you were going to be sentenced in a very few days in Nassau County; isn't that right?

A True, I think the following week or so, something like a week or two.

Q And you were asked some questions in the course of that trial by the Assistant concerning what you expected the

Judge in Nssau County to be told concerning your performance as a witness for the federal government? Do you recollect that?

MR. LAVIN: Objection.

THE COURT: Overruled.

A I think I recall that question.

Q Do you recollect at 721 being asked this question and making this answer:

"Q You expect that the Assistant United States Attorney present before Judge Spitzer on Thursday --" Thursday was the day you expected to be sentenced, was it not?

A Thursday when?

Q Thursday of the week that you were testifying in the trial before Judge Ward.

A I don't remember if it was a week or two later but I was sentenced on a Thursday.

Q "Q You expect that the Assistant United States Attorney present before Judge Spitzer on Thursday will tell him about the testimony which you gave in the three trials since December of 1972?

"A Yes."

Do you recollect being asked that question and making that answer?

A I believe so. I'm not sure but I believe so.

Q "Q And you have expected, have you not, and you expect currently that the Assistant United States Attorney will characterize your testimony in describing it to Judge Spitzer as being truthful or, if he believes it to be perjurious, as perjurious"-- I am sorry, there was an objection to that question. I am very sorry.

"Q Mr. Lipsky, would you tell the jury, please, what expectations you have and you have had during the last three trials, including this one, concerning the nature of the report which will be given to Judge Spitzer as to the truthfulness of the testimony which you gave in these three trials?

"A I would hope that the United States Attorney who would speak to the Judge would tell him I told the truth on three such trials", do you remember being asked that question and maing that answer?

A I believe so, Mrs. Rosner.

"Q If you had testified perjuriously, what would your expectation be with respect to what was told to Judge Spitzer?

"A That the United States attorney would speak to Judge Spitzer and tell him I had lied in such trials."

Do you recollect being asked that question and making that answer?

A Yes, Mrs. Rosner. I'd like to ask you the three trials you are referring to, if I may.

Q Mr. Lipsky, Judge Spitzer was never told about your perjury, was he?

A Not as far as I know, Mrs. Rosner.

Q You were sentenced to an indeterminate term of up to 20 years, isn't that right?

A That is not exactly how it reads. It reads an indeterminate term up to 20 years, not of up to 20 years.

Q I am sorry. And you know, do you not, that an indeterminate term means that you are eligible for parole immediately?

A As I said to Mr. Duke yesterday, I have only had conversations with people and nothing in formal writing from the State of New York authorities where I

am told that I am eligible for this parole immediately, as you just stated.

Q As you sit here now, when do you expect to see the Parole Board?

A To see the Parole Board? I don't know, Mrs. Rosner.

Q Do you think it is going to be within five years?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Did you have conversation with your attorney concerning when a person sentenced to an indeterminate term up to 20 years becomes eligible to meet the Parole Board?

A Which attorney, Mrs. Rosner?

Q Any attorney?

A Yes, I did.

Q And don't you know, as a result of that conversation, that an indeterminate term means that you don't need to be incarcerated for any period of time before you became eligible to meet the Parole Board?

MR. LAVIN: Objection to the form of the question.

THE COURT: She may ask what he knows about

this.

A No, Mrs. Rosner. I have heard there is a minimum. I have just heard by word of mouth from different people that there is a minimum amount of time on a sentence of that type which must be served before the parole applicant is eligible for parole.

Q Mr. Lipsky, what is your understanding what that minimum is?

A Either 10 months or a year, but I have not been todl that by any official of the New York State parole system or correction system.

Q How long have you now been incarcerated, approximately, Mr. Lipsky?

A About almost 22 months.

Q So that according to your understanding you have already served whatever minimum period of incarceration is required under your sentence, isn't that right?

A If that's true that it's 10 months or one year incarceration before you can see the Parole Board.

Q And you fully expect, don't you, that when you conclude your usefulness as a witness the federal government will notify or speak in some way to the parole authorities in New York State, don't you?

A I have been told that someone in the United States Attorney's office will make it known what use I have been to the federal government in this district.

Q And you desire that, don't you, Mr. Lipsky?

A Yes, Mrs. Rosner.

Q Because you still feel as you sit here now that if they had their way, the authorities in Nassau County might keep you pent up for every day of those 20 years, don't you, Mr. Lipsky?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q In your own mind, Mr. Lipsky, as you sit here today, you believe, do you not, that without the intervention of the federal government you might well spend every day of 20 years in jail for that manslaughter conviction, isn't that a fact?

MR. LAVIN: Objection.

MRS. ROSNER: I am sorry, your Honor. I did not hear your ruling.

THE COURT: I haven't ruledyet.

The objection as to form only is sustained.

BY MRS. ROSNER:

Q In your own mind as you sit here today, Mr. Lipsky, do you not feel that without the help of the

federal government in connection with your parole you might not be paroled?

A I have no way to know that, Mrs. Rosner. An ordinary person who gets 20 years in the State of New York system is eligible for parole after a third of doing that time.

Q I am sorry, Mr. Lipsky, I may have misled you by my question.

A Yes.

Q I am asking you what your own belief is as you sit here today testifying. You believe, do you not, that if the federal government does not come to your aid in connection with your parole you might very well not be paroled? Isn't that what you feel?

MR. LAVIN: I object to the form of the question only.

THE COURT: No, we will let him express his feelings. I am not sure whether the form is all right but I think it will be quicker if we take his views.

A My view is that I would feel fortunate if the federal government would at some time tell the state parole people and so I might obtain a parole.

THE COURT: Now, the other side of the point Mrs. Rosner is trying to elicit from you is, if

you don't get the federal government's help, what is your feeling as to your chances before the Parole Board.

MRS. ROSNER: Thank you, Judge.

THE COURT: If you have any feelings.

A Having never been before a Parole Board, your Honor, I don't know. I am just ignorant of -- I have no feeling or -- I don't know what they might do, Mrs. Rosner.

Q You don't believe, do you, that the authorities in Nassau County are going to recommend your parole, do you, Mr. Lipsky?

MR. LAVIN: Objection, your Honor.

THE COURT: I don't think that that is relevant.

Q Mr. Lipsky, do you think when the federal authorities speak to the New York State parole authorities they are going to tell them that on three separate occasions in three separate trials you perjured yourself under oath?

MR. LAVIN: Object.

Q Do you expect that?

THE COURT: Have you any expectation of what they are going to tell or who they are going to tell or when they are going to tell anything?

THE WITNESS: I have been told that --

led to believe that someone in the U. S. Attorney's office will by some method convey the extent of my cooperation with the government to the New York State parole officials, but I have no way of knowing what they are going to sayto them.

Q If you perjure yourself under oath before this jury, Mr. Lipsky, do you think that the federal government is going to tell the New York State Parole Board about it?

A I would think so.

Q The same way they told Judge Spitzer, right, Mr. Lipsky?

MR. LAVIN: Objection, your Honor.

THE COURT: Sustained.

Q Mr. Lipsky, have you ever visited or consulted with a psychiatrist?

THE COURT: I think we have gone into this area but I will let you go into it as a preliminary question ifyou want to.

A You mean when I was in Nassau County jail?

Q At any time in your life, Mr. Lipsky.

A Yes, once,before.

Q And that prior occasion when you visited a psychiatrist you did so at your mother's request, didn't

you, Mr. Lipsky?

A That's true, Mrs. Rosner.

Q And during the period of your incarceration you visited with a psychiatrist, did you not?

A I wouldn't call it a visit. I was taken before two supposed psychiatrists.

Q Two psychiatrists, and that visit, if we can call it that, was arranged at the request of your attorney, wasn't it, Mr. Lipsky?

A I'm not sure who arranged it Mrs. Rosner. I was taken there forcibly.

Q Haven't you ever come to know who arranged that, Mr. Lipsky?

MR. LAVIN: Objection.

THE COURT: Overruled.

A It was done, I believe, Mrs. Rosner, I think it was at the request of my attorneys.

Q You believe it was?

A Before the trial.

Q And was that because your attorney found it difficult to communicate with you and to make you understand --

MR. LAVIN: Objection.

Q -- the nature of the proceedings pending against

you?

MR. LAVIN: Objection.

THE COURT: Objection as to form is sustained. You may ask him the purpose of the visit if you wish.

BY MRS. ROSNER:

Q Was your visit with those two psychiatrists arranged because your attorney had difficulty in preparing your defense to the murder charges?

MR. LAVIN: Objection.

THE COURT: Sustained. I haven't ruled out the line. I have ruled out the form in which you have asked the questions because of the evidentiary character of matter contained in it.

MRS. ROSNER: I am sorry, Judge.

THE COURT: Unrelated to this witness.

MRS. ROSNER: I will try to put it again.

Q As you testify here today, do you know that the reason why you visited those two psychiatrists was because of some difficulty your attorney was having in consulting with you?

MR. LAVIN: Objection.

THE COURT: I am going to sustain that objection. He's told you that it as not a voluntary visit and you are asking him for what his attorney thought.

I tried to guide you a couple of times now.

BY MRS. ROSNER:

Q Let me ask you this, Mr. Lipsky: Were you having some difficulty in consulting with your attorney prior to your visits with those two psychiatrists?

MR. LAVIN: Objection.

THE COURT: Overruled.

A Was I having trouble communicating wi th Mr. Gwinn, my attorney?

Q Yes. sir.

A No, I have never had trouble communicating with Mr. Gwinn. We speak the same language.

Q It is a fact, is it not, that Mr. Gwinn asked you to testify on your own behalf on your motion to suppress in connection with the murder charges?

MR. LAVIN: Objection.

THE COURT: Overruled.

A I don't know if Mr. Gwinn wanted me to testify at the so-called Miranda rights hearing that they were conducting out there that I was present at, or if he wanted me to testify in the murder trial which was my trial which got started.

Q It is your testimony though that your attorney consulted you or spoke to you about giving testimony in

some connection?

A In something having to do with Nassau County.

Q Your Nassau County case?

A Yes.

Q And in your own mind was there any difficulty between yourself and your attorney in discussing what you might testify to? No. If Mr. Gwinn was going to have me take the stand in my own defense in my murder trial he was going to have me tell what happened.

THE COURT: Just a minute.

Q That is not my question, Mr. Lipsky. To your own point of view, to your own way of thinking, did you perceive any difficulty, any gap in communication between yourself and your attorney concerning your proposed testimony.

MR. LAVIN: Asked and answered, your Honor.

THE COURT: I think it has been. The simple question is were you having any trouble making yourself understood or your attorney making himself understood to you?

THE WITNESS: Not at all, your Honor.

THE COURT: All right,now we have had

that twice or three times in different forms.

Q Although youperceived no problem, it is a fact, is it not, that your attorney --

MR. LAVIN: Objection, your Honor.

THE COURT: Well, I think that there's been enough enunciated, Mrs. Rosner, for you to be attempting to avoid the ruling, and I sustain the objection.

Q During your visits with the two psychiatrists which you have told the jury about, did you tell one of the psychiatrists anything about your memory?

A Yes, I think so.

Q Did you tell that doctor that you have a photographic type of memory?

A I may have said that,Mrs. Rosner.

Q Did you or didn't you, Mr. Lipsky?

A I think I said that, Mrs. Rosner.

(Defendant's Exhibit L was marked for identification.)

BY MRS. ROSNER:

Q I show you what's been marked Defendant's Exhibit L and direct your attention, Mr. Lipsky, to the bottom of thethird paragraph.

THE COURT: What is the question?

MRS. ROSNER: He is reading the document

to refresh his recollection.

THE COURT: He's finished reading it.

MRS. ROSNER: Thank you.

Q Did you tell Dr. Lake that you had a photographic memory?

A I don't know the doctor's name, Mrs. Rosner. I think I told --

Q Did you tell one of the psychiatrists that?

A Yes, I told him I thought I had sort of a photographic memory.

Q Did you also tell the psychiatrist that on occasion you have beaten your head against the wall?

A I may have said that, Mrs. Rosner.

Q Beaten your fist against the wall?

A Hit my hand against the wall? I may have said that.

Q Did you tell the psychiatrist that you have taken a gun and shot the screen out of a television?

A I don't recall if I told that to that doctor. I told other people that.

Q Did that in fact happen, Mr. Lipsky?

A That I shot a television set? Yes, Mrs. Rosner.

Q And did you do that because the announcer said something about your favorite football player that you didn't like?

A Not at all, Mrs. Rosner.

Q What was the reason why you shot the television screen out, Mr. Lipsky?

A Because the picture kept going up and down and wouldn't stop, I couldn't stop it.

Q Why didn't you just turn off the television, Mr. Lipsky?

A Well, Mrs. Rosner, this goes back many years.

I can't recall why, why I didn't turn it off. It just kept doing it.

Q So you didn't just turn off the television, you shot the screen out?

A You just asked me that. I told you yes.

Q Did you tell the psychiatrist that once when you were on a diet and the scale didn't show that you lost as much weight as you thought you did you threw the scale into the ocean?

A A bay, Mrs. Rosner.

Q A bay?

A A bay.

Q Did you tell him that?

A I don't know if I told him that. I may have said that.

Q Did that in fact happen?

A Did I throw a scale into the bay where I lived? Yes.

Q Did you tell the psychiatrist who M. T. Graves is?

A I don't recall if I told him that. I may have, I may have told him that.

Q Who is M. T. Graves, Mr. Lipsky?

A He is or was a character on -- an announcer

for a horror show, a horror film show in Miami on television, a television station.

Q Isn't that also a name that you have used, Mr. Lipsky?

A What, Mr. Graves? Yes, Mrs. Rosner.

Q It is sort of an alias you have assumed, is that right?

A A nickname sort of.

Q Do you sometimes call poeple up and leave them messages like Mr. Graves is calling?

A Mr. Graves called, yes.

Q Mr. Graves called?

A Yes.

Q You still do that, don't you, Mr. Lipsky?

A Yes, I do.

Q You have placed calls from the jail where you are incarcerated and left messages like Mr. Graves called, isn't that right, Mr. Lipsky?

A That's true.

Q Do you still watch horror programs, Mr. Lipsky?

A Just very rarely.

Q You have a lot of time on your hands now, don't you?

jha4 Lipsky-cross

A Yes, I do, Mrs. Rosner.

Q Do you still get up early in the morning to watch horror movies?

A No, Mrs. Rosner, I don't.

Q You used to do that, didn't you?

A Get up early in the morning to watch? No, Mrs. Rosner. I think we covered this in another trial. I don't --

Q Why don't you tell this jury about it, Mr. Lipsky?

THE COURT: Tell them about what?

Q Do you sometimes get up early in the morning to watch horror films on television?

A Do I now?

Q Did you ever?

A No, I never got up early in the morning to watch horror movies on television. If they were on television when I woke up, when I got up, whatever time of day it was, usually a Saturday, in New York City, I would turn on Channel 5 I think and watch the horror movie.

Q You didn't only do this in New York City, Mr. Lipsky, you did this in Florida before you came to New York, didn't you?

A Watch horror movies on television?

Q Yes.

A That's correct.

Q And if you just happened to be up when the Late, Late, Late Late Show was on you would watch the horror movies, isn't that right, Mr. Lipsky?

A In New York or Miami?

Q Any place.

A Yes. I mean, I wouldn't go out of my way to go to the television at 3 in the morning to watch the horror movie, but if I was staying home I would watch -- if there was a horror movie on TV I would watch it, if I wanted to.

Q And sometimes when you are watching the horror movies you sort of play a little game, don't you?

A No, Mrs. Rosner. I don't know what you mean, play a little game.

Q Don't you sometimes make faces back at the monsters?

A No, Mrs. Rosner. I used to make faces at my friends' children to amuse them. I had a lot of friends.

Q Make noises to the children too?

A Yes, make noises and faces at the young children, ranging from three years old to eight years old. I used to make faces and amuse them, I would

say.

Q Faces like horror movie monsters, right, Mr. Lipsky?

A Yes, Mrs. Rosner.

Q Just a little game?

A For children, Mrs. Rosner.

Q Mr. Lipsky, you told the jury about your photographic memory.

Prior to today on how many occasions would you say you have had an interview with some member of the federal government?

A You mean an assistant United States attorney?

Q Yes.

A Or agents?

Q Anyone.

A How many separate days?

Q If you can give us an estimate.

THE COURT: He wants to know who you are talking about first. Are you talking about lawyers or agents?

MRS. ROSNER: I will put the question again, your Honor.

Q If you can give the jury a number, on how many different days did you have some conversation with any

member of the federal government concerning what you were going to testify about?

A Only concerning what I was going to testify about?

Q Yes, concerning testimony. Not necessarily at this trial; at any trial.

A That's difficult, Mrs. Rosner. For each trial I testified in I spoke to the assistant who was handling the trial before the trial, sometimes three or four times, sometimes more, before each trial.

Q In toto, how many times would you say there were?

A Are you talking about just preparing for trial and testimony as such at that trial or other information about items and people that weren't coming to trial? I am confused.

Q I am not talking about your preparation for this trial specifically. If you can just give us a figure, how many times have you spoken to anybody about any testimony you were going to give in any trial.

A Maybe 30 different occasions.

Q Is that a low figure or a high figure?

A Are you talking just about --

Q Withdrawn, Mr. Lipsky. You began cooperating

in March, 1972, did you not?

A With the federal government?

Q Yes.

A That's true.

Q Do you remember making a statement in March of 1973 concerning narcotics deals you say you had with Mr. Catino?

A In March of '73?

Q Yes. Do you remember making a statement?

A I am trying to think what happened in March of '73 to refresh my memory.

Q Let me show you Exhibit 3511B and ask you whether you remember signing the original of this document on March 30, 1973 in front of agents Joseph Laury and Stuart Stromfeld?

A Mrs. Rosner -- oh, yes, I see the date now. Yes, I recall this, making this statement to these agents.

Q Mr. Lipsky, when you weren't actually speaking with agents of the federal government about your testimony you were sitting in your cell thinking about what you were going to say to help yourself, weren't you?

A Well, among other things I would think about.

Q Some portion of your time you thought about what you were going to tell them, isn't that right?

A Sometimes it crossed my mind, what --

Q And you tried to refresh your own recollection about details, about persons and places and things that you couldtell the government to help yourself, isn't that right?

A That is correct.

Q And March 1973 was just about a year after you began cooperating, isn't that right?

A Just about a year.

Q And in March of '73 did you tell agents Laurie and Stromfeld that some time in August or September of 1971 there was a narcotics transaction involving two kilos of heroin?

A In which months, Mrs. Rosner?

Q August or September of 1971.

A Did I tell them there was a move involving two keys of junk?

Q Yes.

A I believe so.

Q And did you tell them that in November or December of 1971 there was a narcotics transaction involving one kilo of cocaine?

A I believe so.

Q At that time did you tell them about the time when you say you went to 115th Street to buy what you characterize as hit, mannite?

A No. As I have told this jury on direct the day before yesterday, I think it was, I didn't go -- I went up to the area of 115th Street, but I didn't go by the hit. These other people I was with went to just get some hit from these two men.

Q Did you tell the agents about what you say you observed on that day some time in June or July or whenever you say it was when you accompanied someone to 115th Street to get a bag of hit?

A Did I tell them on March --

Q Did you tell them that, yes.

A I have told them at some time this. I don't remember if I told them in that statement.

Q You don't remember whether you told them in this statement? Take a look, Mr. Lipsky, see if it refreshes

your recollection.

A I don't see that transaction about getting the hit in this statement, Mrs. Rosner.

Q Did you tell the agents about the time you say you went to 113th Street and had a discussion or overheard a discussion in which Mr. Catino participated about buying cocaine when nothing transpired, some time in the summer of '71? Did you tell them about that?

A Yes, I told them about many transactions like that, dry runs like that.

Q Did you tell them about that in March of 1973, Mr. Lipsky

A Which transactions are you asking about now, Mrs. Rosner?

Q Did you tell us about one where some time over the summer of 1971, in June or July, you went up to 115th with another individual and you had a conversation or you overheard a conversation in which Mr. Catino was asked whether he wanted to buy some cocaine and nothing ever came of it?

A Yes, I remember saying that here the other day.

Q Did you tell the agents about that in March of 1973?

A I don't know if I told them about it in March of 1973 or at some prior time or at both times, Mrs. Rosner.

I don't recall if I told them about it -- how many times I told them about it.

Q Mr. Lipsky, is it possible you only remembered that after you signed that statement in March of 1973?

A That I had gone to that club and there were discussions about narcotics and nothing happened?

Q Yes, Mr. Lipsky.

A No. I have told them that way back when they first started to interview me.

Q But it is not reflected in your signed statement of March of 1973, is it, Mr. Lipsky?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q In March of 1973, when you signed this statement, did you tell the agents that some time between June and September of 1971 there were five separate occasions when you were in the area of 115th Street and overheard or participated in some kind of narcotics discussions?

A Between the months of when and when, Mrs. Rosner?

Q June and September or May and September.

A I think that would have to carry up past September into also November and December.

Q Any dates you went, Mr. Lipsky. Between June and December when you spoke to the agents in March of 1973, did

you tell them about five separate occasions when you engaged in or overheard some kind of narcotics conversations involving Mr. Catino?

A Yes.

Q You did?

A Did I tell the agents?

Q Yes, did you tell the agents that.

A Yes, I have told the agents about these moves.

Q I show you 3511. See if that refreshes your recollection concerning what you told them.

MR. LAVIN: Objection, your Honor.

THE COURT: He may take a look to see what it does for his recollection.

A Yes, Mrs. Rosner, I believe this statement talks about two such moves.

Q Isn't it a fact, Mr. Lipsky, that the longer you remain incarcerated the more things you remember happening?

A The longer I remain incarcerated the more things I remember happening? No, that's not -- I wouldn't say that's a correct statement.

Q You have a photographic memory, don't you, Mr. Lipsky?

A No. I have a good memory. I don't know if it's photographic. I sometimes might have said it was close to

photographic, because I can remember a lot of figures and numbers and phone numbers and license plate numbers, that type of thing.

Q Mr. Lipsky, you told the jury about two occasions in June and in December of 1972 when you committed perjury under oath in this court house, isn't that right?

A That I told this court about yesterday?

Q Yes, Mr. Lipsky.

A Yes.

Q There was a third occasion, wasn't there, Mr. Lipsky, in this very court house?

A A third occasion?

Q Yes. Mr. Lipsky.

A I don't know --

Q You testified under oath in June of 1973, at the trial of Mr. Catino and Mr. De Franco, and you lied, didn't you, Mr. Lipsky?

MR. LAVIN: Objection, your Honor, to the form of the question.

THE COURT: Sustained.

Q You testified under oath in this court house before a jury of 12 people at the trial of Mr. Catino and Mr. De Franco, didn't you, Mr. Lipsky?

MR. LAVIN: Objection, your Honor.

THE COURT: Overruled.

A Did I testify in that trial?

Q Yes.

A Yes, I did.

Q And your testimony in that trial was not truthful, was it, Mr. Lipsky?

A As to what, Mrs. Rosner?

Q As to anything that you testified about.

A Yes, it was true, Mrs. Rosner.

Q It was true, Mr. Lipsky? The jury just didn't believe you.

MR. LAVIN: Objection, your Honor.

THE COURT: Mrs. Rosner, are you through with this witness?

MRS. ROSNER: I am, your Honor.

THE COURT: The jury is excused.

(Jury left the courtroom.)

THE COURT: Mrs. Rosner, please rise.

The Court regards your last statement to this witness in the form of an alleged question as a deliberate attempt to subvert the fair trial of this case. It was premediated, it was deliberate, it was done with a view to improperly influence this jury.

I hold you in contempt.

MRS. ROSNER: I request a hearing under Rule 42(b).

THE COURT: You will get a hearing. I request you to have counsel, if you are so advised, and to make an answer to that charge, setting forth your reasons for the question and any explanation thereof.

The hearing will be held on January 3, 1974 in Room 706, unless adjourned for other business.

Court will stand in recess.

(Recess.)

(In robing room, all counsel and all defendants present.)

THE COURT: Did you have some application?

MR. LAVIN: Yes, your Honor. In view of Mrs. Rosner's question I'd like an instruction to the jury that there was absolutely no basis in fact for that question and it was highly improper and should be disregarded.

THE COURT: I will take care of that.

MR. LAVIN: That is all I had.

Thank you.

(In open court, jury present.)

THE COURT: Ladies and gentlemen of the jury, I think I have told you on prior occasions, and I'd like to repeat again, a case is decided on the evidence. It isn't decided on unanswered questions, or lawyer's inquiries, or suggestions that might appear in questions that are not allowed, and while it is difficult, some times, to disassociate yourself from an innuendo which might be conveyed by a question, it is your sworn duty in order to conduct a fair and impartial trial and inquiry, to absolutely disregard anything that comes to you, whether from a lawyer or any other person in the courtroom, who is not on the witness stand, who seeks to convey to you something that is not evidence, whether he seeks or she seeks to convey it in-

tentionally or otherwise.

There is an old saying. Years ago, when they used to try cases down south, and a lawyer improperly picked up a skunk and threw it in the jury box, and the other lawyer objected at once he said "All right, I consent, it may be removed."

And the skunk was removed but the smell lingered on.

You have got to, under your sworn duty, exclude any odor, any aroma, any suggestion, that might be put improperly before you, in order that there be no obstruction of justice and that a fair and impartial trial based solely on evidence is conducted.

Now the last question you hear was grossly improper. There is no evidence whatsoever in this record to have warranted any such question or any suggestion that may flow from it, and I beg of you, I caution you, and I instruct you, to ignore it and erase it from your minds in every respect.

Mr. LaRossa?

MR. LA ROSSA: Would you bear with me for a moment? I am writing something out.

THE COURT: Are you prepared to go forward with your cross?

MR. PELUSO: I believe, Judge, with the Court's permission, that Mr. La Rossa wanted to proceed first.

MR. LA ROSSA: I am just writing a note to the Court.

THE COURT: Yes.

As I say this, and I want to add, no adverse inference whatsoever against any defendant in this case is to be taken from this ruling. The Court's rulings are not evidence. You must be guided by the evidence. These defendants are not to be penalizedmentally or in any other way by anything that develops in the course of trying to keep this case on a legal and proper and fair and impartial keel; so don't make any mistake about that either.

MR. LA ROSSA: I am now ready to proceed.

THE COURT: Thank you.

Did that last statement obviate your note to me?

MR. LA ROSSA: It did.

THE COURT: All right.

CROSS EXAMINATION

BY MR. LA ROSSA:

Q Mr. Lipsky, my name is La Rossa and I represent Mr. Mallah. Were you ever questioned in a courtroom in this building by a Mr. Arkin?

A I believe I was.

Q When he asked you certain questions, Mr. Lipsky, did you give that Court and jury untruths?

A To certain questions he asked me, Mr. La Rossa.

Q More than one, right, Mr. Lipsky?

A More than one?

Q Yes.

A I believe so.

Q Did therecome a time after you testified in that particular matter and was asked questions by Mr. Arkin, that you sat down and wrote a letter to one Robert Morvillo?

A I have answered the questions about that letter here.

Q I am asking you this, sir. If the Judge stops me --

THE COURT: Mr. La Rossa may not have been here at that time. You may answer.

A I am sorry. Did I write a letter to Mr. Morvillo? Yes, I did.

Q You knew at the time that Mr. Morvillo was an Assistant United States Attorney in charge of the criminal division in this building?

A I was so told.

Q Did you tell Mr. Morvillo that you were sorry you had answered those questions wrong?

A I may have said something to that effect.

Q Did you tell him that the reason was that you just didn't have enough time with the Assistant U.S. Attorney before you testified?

A I may have said something like that.

Q Did you say that you were not spoken to enough beforehand? Did you use those words in that letter?

A I don't know if I used those words.

MR. LA ROSSA: With the permission of the Court may I show this to the witness?

THE COURT: Yes.

Q I show you what has been marked 3521, sir, and I point to this paragraph here and I ask you to read it to yourself and tell me if it refreshes your recollection.

THE COURT: Court's Exhibits 8 and 9 have been handed up by Mr. Duke.

(Court's Exhibits 8 and 9 were marked.)

THE COURT: The objection as to Court's Exhibit 8 is overruled.

9 is not an objection. It may be filed.

Q Mr. Lipsky, did you tell Mr. Morvillo that the reason you answered those questions untruthfully was because you were not spoken to enough beforehand? Did you say that in the letter?

A There is more to what I said than -- there is more to that statement I said than where you stopped, Mr. La Rossa. I think it goes on.

Q "Not spoken to enough beforehand by any understanding that I had with your office"? Is that what you said?

A Yes, sir.

Q Were you telling Mr. Morvillo that the Assistant and you hadn't gone over it enough?

A I was telling him in effect that the case was switched from one Assistant United States Attorney to another one at a late date before the trial.

Q And notwithstanding your memory for details and events, the fact that a new Assistant took that case over, you gave untruthful answers during that trial?

MR. LAVIN: Objection. Objection to the form of the question.

THE COURT_ Ogjection asto the form will be sustained.

Q You do have a good memory, right?

A I believe so.

Q Not withstanding that good memory, the fact that a new assistant came in to try that case created in you problems that caused you to answer questions untruthfully?

MR. LAVIN: Objection as to form.

THE COURT: Sustained as to form.

Q The reason that you answered those questions untruthfully was that a new assistant United States attorney came in and took that case over?

A One of the reasons.

Q You know, do you not, that a probation report goes t a judge before you are sentenced? Are you aware of that?

A Are you talking about in my state, my state --

THE COURT: He is talking about generally, generally.

A Yes, I have heard that a probation report goes to a judge for him to look at.

Q You know that the purpose behind a probation report is aiding a judge, do you not, in determining what type of sentence that judge should give?

A I have heard that is what it is for.

Q You knew that in Florida when you made statements to the probation officer prior to your sentence, did you not?

A No, sir. I don't believe I ever spoke to a probation officer before I saw the federal district judge, Joe Eaton. I saw Mr. Thomas, the probation officer in the Southern District of Florida, in Miami federal courthouse, after I saw the judge and was given three years probation.

Q Did you write a statement out to the United States probation officer after the sentence?

A I don't recall if I wrote a statement out to the man or not as I was asked here this morning by Mrs. Rosner.

Q Let me show you what's been marked Court's Exhibit 5, sir. Is that part of a statement that you wrote to that probation officer in Florida prior to the time that you were sentenced?

A To my best recollection, Mr. La Rossa, I saw this probation officer for the first -- the first and only time after I saw the judge, after I was sentenced that morning in Miami federal courthouse.

Q Mr. Lipsky, did you write a letter to that probationofficer?

A Write a letter to him?

Q Yes.

A You mean a letter that I mailed?

Q Mailed,handed to him, gave it to someone else to give to him.

A A letter to Mr. Thomas, the probation officer?

Q Yes, sir.

A I don't -- I may have written him a letter. I don't at this time recall writing him a letter.

Q Did you write out a statement about your participation in the crime?

A I think as I was asked earlier here this morning, that he asked me to write out something. I think I recall writing something out and I think that -- I think to the best of my recollection that this is part of what I wrote.

Q When you wrote that statement out, sir, there is no question about the fact that you were engaged in narcotics trafficking in New York, right?

A The day that I wrote that statement out for the probation officer?

Q During the time that you wrote it out, sir.

A That I was engaged in narcotics activities in New York at the time that I wrote that statement for

the probation officer?

Q That is what I am asking.

A That's correct.

Q No question about that, is there?

A No, sir.

Q And yet in that statement did you put this phrase:

"Thinking clearly about such a situation again, I know I would choose against ever making such an illegal move again"?

Did you write those words?

A Well, Mr. La Rossa, as I said before --

Q Can you answer that yes or no.

MR. LAVIN: Objection.

A That's typed, Mr. La Rossa.

Q Can you answer me whether or not you wrote those words in a statement to that probation officer in Florida?

A It's -- it sounds like something that I wrote to him, if in fact I wrote such a statement to this Mr. Thomas, but I did not type up that piece of paper, as I said.

Q Let's talk about your memory for a moment and see if we can work something out here.

MR. LAVIN: Objection, your Honor, to that.

THE COURT: Yes, please don't have any running comment, Mr. La Rossa. You are too experienced for that.

BY MR. LA ROSSA:

Q Doyou remember writing out a statement?

A I just told you I thought I recalled writing out a statement. It's over two years ago.

Q Any question in your mind about it?

A I think I wrote something out. The man -- probation officer, Mr. Donald Thomas, I think was his name, he asked me to write something out for him.

Q Did you in that statement put any kind of words that would indicate to him or the judge or anyone who read it that you'd never engage in any illegal activities again?

A I think that's correct.

Q Did you know that you were lying when you wrote that statement?

A True.

Q No question about that, right?

A That's correct.

Q And you did it in an attempt to get the best deal you could in Florida, isn't that right?

A Did what, Mr. La Rossa, write that statement?

Q Wrote the statement.

A I wrote the statement out because the man asked me to write the statement out.

Q Did you ever talk to Mr. Mallah?

A To Ben Mallah? Did I ever talk to him?

Q Yes.

A No.

Q Did you ever say a word to him?

A Not as far as I recall.

Q Did you ever meet him?

A What do you mean meet?

Q Did anyone ever introduce you to him?

A Did I ever shake hands withhim? Is that what you mean?

Q Shake hands, say hello.

A No, I have never. I just said I never said anything to him. Never shook hands with him.

MR. LA ROSSA: Thank you, Mr. Lipsky.

THE COURT: Mr. Peluso?

Could I suggest this. Mr. Mitchell, is your cross examination going to be short? What I am thinking of, I am looking at the clock.

MR. MITCHELL: I don't think I am going

to ask Mr. Lipsky a question.

THE COURT: All right, then go ahead, Mr. Peluso.

MR. PELUSO: Thank you, Judge.

CROSS EXAMINATION

BY MR. PELUSO:

Q Mr. Lipsky, in response to a question put to you by Mrs. Rosner concerning whether or not you have a photographic memory, did you state that you may have told that to someone but you felt you had a good memory?

A That's a true statement.

Q And you said that you may have felt you had a photographic memory with regard to such things as phone numbers and license plate numbers and addresses and things of that type?

Q You testified concerning certain transactions that took place at a club on East 115th Street involving Mr.DeFranco, is that ribht?

A That's right.

Q Approximately how many times had you been to that club?

A How many times have I ever been to that club?

Q Yes.

A Oh, I don't know. Maybe between 15 and 25 times, something like that.

Q Can you give us the address of that club?

A The address?

Q Yes.

A The street number?

Q The address.

A No, sir, I don't know the street number, the address of the club.

Q You testified -- and if I am incorrect, correct me -- that some time between October, November, December or September, October, November, December you were at this club, is that right, of the year 1971?

A True.

Q You were unable to fix the specific month.

A On which transaction were you speaking, Mr.

Peluso?

Q I believe you testified to two transactions concerning Mr. De Franco, is that right?

A Yes, I think so.

Q And on each of those transactions you were unable to fix a specific date in 1971?

A That's true.

Q In fact, your testimony was that it happened somewhere within a series of maybe three,four, five months in 1971?

A Those two transactions?

Q Yes.

A True.

Q You testified that on two occasions you were given the keys and the registration ticket to a white Cadillac, is that right?

A That's correct.

Q Did you look at the registration when it was given to you?

A I may have looked at it.

Q Was it a New York registration?

A I don't recall, Mr. Peluso.

Q Was that registration in the name of Mr. De Franco.

A I don't recall the name on the registration.

Q Did you look at the license plate number of that white Cadillac about which you testified?

A No, sir.

Q You did testify that you drove that Cadillac on many occasions, did you not?

A No. I said I drove that Cadillac on two occasions I told you about, two occasions that I recall explicitly.

Q Did you drive it on only two occasions?

A I may have driven it more, but the two occasions for certain that I drove it on --

Q All right. Would you tell this jury the license plate number of that Cadillac?

A I don't know the license plate number.

Q Was it a New York license plate number?

A I don't know, Mr.Peluso.

Q Do you know the year of that Cadillac that you drove?

A The year model?

Q Yes.

A Well, I know how to describe it, but it's been a while. It was a -- I can describe the car, if you like.

Q You can't give us the year of the Cadillac?

A I am not sure of what year model it was. It was a 1960-something, I believe. I am not 100 per cent sure.

Q You believe it was a 1960 --

A I mean in the '60s, from 1960 to 1970.

Q When you say it was a white Cadillac, you saw the Cadillac, did you not?

A I drove the Cadillac.

Q No doubt in your mind it was a white Cadillac?

A Well, I recall it being a white Cadillac, yes.

Q You have no doubt as to that, that it was a white Cadillac, do you?

A Well, it was very dirty, but I think it was a white Cadillac.

Q Mr. Lipsky, you have taken an oath here to tell the truth, is that right?

MR. LAVIN: Objection to the question.

THE COURT: You may answer the question.

A True.

Q Would that oath prevent you from telling a lie before this jury if you felt that by lying you could help yourself?

A Are you asking me if I would lie sitting here?

Q In spite of the fact that you have taken oath, would that prevent you from lying if you felt that by lying you would help yourself?

A Yes, Mr. Peluso, I would not lie under oath here.

Q You would not lie because --

A I would not lie because I took an oath not to lie and I would not lie because I am telling the truth.

Q On the prior occasions -- I believe there were three -- you took an oath on each and every one of those occasions to tell the truth?

A Three what occasions?

Q I believe you testified once before a grand jury in Florida, did you not?

A That's true.

Q And you took an oath on that occasion?

A That's true.

Q And did that prevent you from lying on that occasion?

A No, sir.

Q Then you testified in several trials in this court, did you not?

A That's true.

Q And on those occasions you took an oath to

tell the truth, is that right?

A That's right.

Q And when you took the oath on those occasions wasn't the oath similar to the one you took here today?

A It was the same oath, I believe.

Q On those occasions, sir, did that prevent you from lying?

A No, sir.

Q But today you are telling this jury that because you took an oath that would prevent you from lying, is that right?

A That andthe fact that I am telling the truth.

Q Are you lying now when you say you are telling the truth?

A I am not.

Q What do you estimate is the time that you will require?

MR. PELUSO: I don't expect to be very long, Judge.

THE COURT: Should we finish up before lunch?

MR. PELUSO: I don't think I will finish before lunch, your Honor.

THE COURT: The jury may have a recess at

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this time for lunch. We will resume at 2 o'clock. a pm

(Luncheon recess.)

AFTERNOON SESSION

2:10 p.m.

(In open court; jury present.)

B A R R Y L I P S K Y, resumed.

THE COURT: Let me just ask Mr. Duke:

Mr. Duke, am I correct that the substance of Court's Exhibit 3 was cleared up subsequent to the time that you handed it up?

MR. DUKE: Yes, that's my recollection.

THE COURT: That that matter is now moot on Exhibit 3?

MR. DUKE: I believe so, yes.

THE COURT: Thank you. All right, Mr. Peluso.

CROSS EXAMINATION

BY MR. PELUSO CONTINUED:

Q Mr. Lipsky, concerning the first occasion that you went to the club that you spoke about, when you had a transaction with Mr. De Franco, can you tell us who besides yourself and Mr. De Franco was in the club?

A Fuzzy and Pacelli.

Q Anyone else?

A To the best of my recollection, it was the four of us there. Which transaction are you talking about, the one

involving a half a kilogram, a half key of cocaine?

Q I am talking about your testimony concerning the first transaction when you used the white Cadillac about which you have testified.

A As I recall, Fuzzy and De Franco and myself and Pacelli were there.

Q And you remember no one else being in the club?

A Well, there were sometimes other people in the club who weren't involved in the transaction that --

Q Can you describe some of these other people that were in the club on these occasions?

A Just other people that I didn't know, men I didn't know just hung around there.

Q A man?

A Men, men who I don't know who hung around there.

Q Can you describe any of these people that you didn't know that you saw there?

A One was a bum.

Q When you say a bum --

A I mean a guy -- a person who slept on the couch there. He ran out for sandwiches or --

Q How old a man would this be, the man you describe as a bum?

A I don't know, between 45 and 55, something like

that, I think.

Q Yes? Is that the best description you can give us?

A And a sort of a -- I don't know -- indigent or broke. He was all dressed in rags and he lived on hand-outs from these people, I think.

Q How long were you in the club on this occasion?

A On the occasion with the white Cadillac?

Q Yes.

A I don't know. Maybe -- before I left to go and make this transaction?

Q Tototal amount of time that you were in the club.

A Before I left to go make the transaction?

Q That is right.

A Maybe 15 minutes.

Q And this was the occasion when you saw this man that you categorized as a bum?

A No, no, Mr. Peluso. There were all various other people who I did not know in that club, not always. Sometimes there were other people there. Sometimes there was ho one there except the principals I described to you.

Q Mr. Lipsky, this club you are speaking about, the entrance to this club, where would that be?

A On 115th Street.

Q Right on the street?

A You have to take a step or two up to get in the door.

Q In what type of a building would this be?

A I don't know. An apartment building I think. It was an apartment that -- I called it a club because they called it a club. It was a ground-floor apartment.

Q This was an apartment?

Q It was an apartment. I don't know what they call it, a railroad type apartment with one room behind another room on the ground floor, not even with the street, maybe two feet up from the street, which you could call a ground-floor apartment.

Q Was there a bar in this club?

A A bar? I don't recall a bar.

Q Was there any furniture in the club?

A Yes.

Q You don't recall seeing a bar in the club?

A No, I don't recall seeing a bar. How do you mean a bar, a big bar with bar stools and --

Q A big bar, a small bar, any bar?

A I don't recall a bar in this club.

Q When you went into the club, did you confine yourself to one room?

A No, there were two rooms or three rooms that I would go walk back and forth between, depending on who I was talking to or who Pacelli was talking to.

Q Do I understand that the club consisted of three rooms?

A I'm not sure if it was three rooms or four rooms. There was a little sort of vestibule as you came in. Then there was another room where the TV -- a front room, and then there was a room where there was the TV behind that, and behind that there was another room where there was a round or sort of a table where the men played cards and there was a little bathroom alcove off of that with a door.

Q You say the entrance into and out of the club was on 115th Street?

A Yes, and there was another entrance, a door that led to the hallway where the stairs were that went up-stairs.

Q You were in this hallway?

A One time when I went up the stairs I was in the hallway.

Q You say you ascended the stairs?

A I told you, it's on direct examination about how I went up the stairs to see thse two men in this apartment.

Q Can you describe this stairs? Is it one long

flight going up or is it a series of stairs?

A I think it was -- well, where I went to the second floor, there was one flight of stairs going up, I believe.

Q One flight?

A One.

Q Ascending?

THE COURT: Mr. Peluso, you are repeating every answers that the witness has given.

Q You ascended from the main floor to the first floor?

A I walked up the stairs, Mr. Peluso, from the floor that you walk in off the street on, up to the next floor.

A One straight flight of stairs, I believe, like that.

Q And the stairs that you ascended, where in the hallway would they be located?

A When you have your back to 115th Street, I think they were on the left of the hallway, and the hallway was on the right of this area and the stairs were to the left against the wall.

Q And you ascended these stairs on how many occasions?

A Just one time.

Q After having ascended the stairs on one occasion

you entered one of the apartments on whatyou describe as the second floor?

A That is correct.

Q By the second floor you mean one flight above the ground level?

A Above the street, yes.

Q And do you remember, do you have any recollection as to the number of the apartment that you entered?

A I do not.

Q Can you describe the door leading into the apartment into which you went?

A It was just a door. I don't remember the color of it or anything. It was just there were two doors and I was told to knock on the door on the left.

Q Was it a wooden door or was it a metal door?

A I don't recall, Mr. Peluso, whether it was wood or metal.

Q You knocked on the door and you gained access to the apartment, is that right?

A That's correct, the door was open and I went in.

Q And who opened the door for you?

A De Franco opened the door.

Q Do you remember, after the door was open, the first room or area that you would enter?

A There was only -- as I recall, I walked into a room or an area where there was a table and that was the only room I think I was in. I was only in there one time as I have told you.

Q That room is which room?

A The room as you come through the door I believe.

Q As soon as you come in you say there is a room with a table?

A Mr. Peluso, I was only in this room one time and up these stairs one time and into this apartment one time, and I believe as De Franco opened the door I stepped in about five feet and there was a table there, to the best of my recollection, where Fuzzy was counting some money at a table.

Q You say there was a table and I see you are making some gesture with your hand. Was it a round table or was it a square table?

A I can't recall if it was a round table or square table. It was a small table.

Q It wasn't a dining room table?

A Mr.Pe luso, it was a small table. I don't know if it was a dining room table. As best of my recollection, it was a small table like where four people could sit around a small table.

Q Did you see anyone else in the apartment when you went into the apartment on this occasion?

A Yes.

Q Who did you see in the apartment?

A Fuzzy.

Q Anyone else?

A I saw an outline of someone or some thing, someone laying under a -- in a room adjacent to the left laying under a blanket or something on a cot or a bed

or a couch.

Q You said this room where this someone or something was laying under a blanket was to the left of the room?

A To the best of my recollection, it was to the left, to the left of the room where -- that I entered the apartment in.

Q When you entered the apartment did you go beyond the table?

A No, I went right to the table.

Q Right, to the table so you would be about five feet into the apartment, is that right?

A I can't give you the exact number of feet I was into the apartment.

Q Did you say the table was about five feet into the apartment after opening the door?

A To the best of my recollection, it was five to ten feet from the -- from where the hall door was to where the table was, and I can't recall it exactly. I was only in that apartment one time.

Q How long were you in the apartment on this one occasion?

A Maybe a total of 10, 12 minutes, something like that.

Q The room that you were in, did you have any trouble seeing the furniture that was in that room?

A I don't -- I vaguely recall the furniture that was there.

Q Can you tell us something about the lighting in that room?

A I cannot.

Q Do you know whether it was fluorescent-type bulbs?

A I have no idea.

Q Did you see any wall switches to turn the lights on?

A No.

Q Or were there strings hanging from the ceiling?

A I don't remember anything about any wall switches or strings hanging from the ceiling.

Q How long were you in the apartment?

A I just told you. I think 10 to 12 minutes at the most. Ten, 15 minutes at the outside.

Q Mr. Lipsky, I believe you have testified that you were a cocaine user, is that right?

A That's correct.

Q You used to snort cocaine?

A That's correct.

Q I think you said on pretty much of a daily basis with the exception of perhaps a few days when you just wouldn't snort, is that right?

A Not a regular basis. Irregular basis.

Q On an irregular basis? Were you also a drinker?

A Did I drink?

Q Yes.

A Yes.

Q Did you consider yourself a heavy drinker?

A No.

Q When you would use cocaine, hat effects would it have on your, Mr. Lipsky?

A Oh, would become very alert.

Q Very alert?

A Yes.

Q Would you become numb?

A You could say that you become alert, and if you snort enough cocaine you get a little numb.

Q Would you become violent?

A Would I become violent? No.

Q On the occasions when you would drink alcohol, would you become violent?

A No.

Q Do you remember the first occasion when you met Mr. De Franco?

A Yes, approximately.

Q When was that?

A Some time shortly before the transaction I told you about involving the white Cadillac and the transaction with the half ki of cocaine.

Q In point of time that would be about when?

A I can't recall exactly when, Mr. Peluso. It was prior to that transaction I told you about with the white Cadillac and half a ki of cocaine. I can't recall the exact month, day.

Q Can you give me an approximate month?

A I made these moves constantly with different people all over. I can't exactly , to the best of my recollection I can't give you an exact time that I met Mr. De Franco but it was some time -- some months or couple -- few months after I met Mr. Catino and Fuzzy.

Q I am asking you now whether you can give me an approximate month.

A No, I am sorry, Mr. Peluso. I think it was some time -- end of the summer, beginning of the fall, somewhere around there, I believe.

Q You have no present recollection as to when this meeting took place.

A No, sir.

Q Can you tell us where this meeting took place?

A In that club.

Q Your first meeting took place in the club?

A With De Franco, first time I ever saw De Franco?

Q Your first meeting with De Franco.

A First time I saw De Franco --

THE COURT: He said meeting, first meeting.

A Well, that was -- I don't understand your question exactly. Meeting or first time I saw him or --

Q When was the first time you saw De Franco?

A Like I told you, some time I think in the fall, some time between September, October, November, somewhere around there.

Q Was that also the first time you were introduced to him?

A Somewhere in that period, I believe.

Q And who was present at this introduction?

A Pacelli and Fuzzy.

Q No one else?

A I don't remember if Catino was there at that time or not.

Q On one occasion, sir, some time at or about December, 1971 or shortly prior thereto were you in the company of one Benny Fabre and a young lady, at which time you were under either the influence of cocaine or alcohol?

A In December of '71?

Q Yes.

A I may have been. If you tell me which young lady you refer to, maybe I could tell you for sure.

Q Do you have any recollection of an incident occurring at or about that time when you threw some whiskey in the face of a young lady and began to beat her, at which time Mr. De Franco came to her aid?

A That's an entirely untrue statement. I have never heard that before you just said it.

Q This is untrue?

A That's a complete lie. I never threw any whiskey in anyone's face, I never beat anyone.

Q Do you remember being in a fight with Mr. De Franco and Mr. Catino over an incident involving a young lady in the presence of Benny Fabre?

A I do not. I was never in any fights that I can recall in all the time I lived in New York. I don't fight. And I was never in the social company of -- socializing with Mr. Catino or Mr. De Franco, and I don't ever believe I saw Catino and De Franco at the same time I was with Fabre.

Q You are saying you don't fight?

A Well, I mean when I was a kid I had some fights. But I am not a fighter.

Q Would you say you are not a violent person?

A That's true. I have a bad temper, but I only tend tend to hurt myself, I don't hurt anybody else.

Q You have never hurt anyone else?

A Well, how do you mean?

Q I am asking you have you ever hurt anyone else?

A I guess there has been a time or two when someone has been hurt because of something I have done.

Q As you search your memory now you have no recollection of an incident at or about December, 1971, shortly before Christmas, where in the presence of Benny you threw liquor in the face of a young lady and proceeded to beat her?

A Can you tell me where this was supposed to

have happened?

Q Do you have any recollection of this happening anywhere?

A None whatsoever, as I have just told you.

Q And you have no recollection of Mr. Catino and Mr. De Franco engaging in a fight with you over this incident?

A Never. I never knew them well enough to even have social conversation with them, so I never knew them well enough to have a fight with them.

Q If you were under the influence of cocaine and such an incident did happen do you think you would be in a position to recollect it?

A If such an incident happened?

MR. LAVIN: Objection.

THE COURT: Sustained.

Q Have you ever been in the Hippopotamus?

A Yes.

Q Have you ever been in the Hippopotamus with Benny Fabre?

A Yes.

Q Have you ever been in the Hippopotamus with Patsy Parks?

A Yes.

Q Have you ever been in the Hippopotamus with Benny Fabre and Patsy Parks?

A Yes.

Q Have you ever been under the influence of cocaine while you were in the Hippopotamus?

A Yes.

Q Haveyou ever been under the influence of liquor when you were in the Hippopotamus?

A Yes.

Q Have you ever been in the Hippopotamus under the influence of cocaine and/or liquor with Benny Fabre?

A Yes.

Q And Patsy Parks?

A What do you mean, under the influence of?

Q When you had used cocaine, snorted cocaine.

A Or had a drink?

MR. LAVIN: Your Honor, may we have a side bar? I object to this.

THE COURT: It isn't necessary. But I will comment to the effect that you ask these questions two and three times and since they are collateral matter I think once is enough.

MR. PELUSO: Judge, I am merely attempting --

THE COURT: Please go ahead.

Q Have you ever been in the Hippopotamus with Benny Fabre and Patsy Parks, Mr. Catino and Mr. De Franco where an incident occurred between you and Patsy Parks?

A Between me and Patsy Parks?

Q That was my question.

A Absolutely not.

Q You are certain of that?

A What do you mean, an incident?

THE COURT: Please.

Q Did you ever throw a glass of whiskey in Patsy Parks' face and proceed to beat her in the Hippoptamus in the presence of Mr. Fabre, Mr. Catino and Mr. De Franko?

MR. LAVIN: Objection. Asked and answered.

THE COURT: No, it hasn't been.

Go ahead, you may answer. Answer it simply, please.

A No.

Q And that is a truthful answer?

A Yes.

Q As truthful as all your other answers?

A Yes.

MR. LAVIN: Objection.

MR. PELUSO: I have no further questions,

your Honor.

THE COURT: Mr. Mitchell?

MR. MITCHELL: I have no questions, your Honor.

THE COURT: Is there any redirect?

MR. LAVIN: Just a short few questions, your Honor.

THE COURT: Make it short.

MR. LAVIN: Yes.

REDIRECT EXAMINATION

BY MR. LAVIN:

Q Mr. Lipsky, you have been asked extensively about the perjured testimony you gave in the two trials in this courthouse and you admitted that testimony you gave was false, is that right?

A True.

Q The testimony that you say was false, did it have to do only with what questions you were asked about promises that were made to you regarding your cooperation with the government?

MR. DUKE: Objection, your Honor. Leading the witness.

THE COURT: Overruled.

MRS. ROSNER: I object to the characteriza-

tion, your Honor, most respectfully.

THE COURT: Overruled.

A I am sorry. I don't understand.

THE COURT: Was the subject matter solely concerned with promises by the government to you? Was that the subject matter of the testimony that was incorrect?

THE WITNESS: I believe so.

Q You have been asked about a letter you sent to Mr. Morvillo, who was chief of the Criminal Division here. Did that letter have to do with the fact that you might have given incorrect answers to questions about the cooperation?

A Yes.

Q Did you tell Mr. Morvillo you were sorry about that?

A I did.

Q Did you also tell Mr. Morvillo in that letter that you gave truthful answers to every question you were asked --

MRS. ROSNER: Objection.

MR. DUKE: Objection. Leading the witness.

THE COURT: It is not leading, but it calls

for the contents of a document not in evidence.

MR. LAVIN: I withdraw the question.

Q Do you recall yesterday you were asked by Mr. Duke questions regarding grand jury testimony on 4/11/1972?

A About --

Q Mr. Duke asked you some questions which he told you were from a grand jury on 4/11/1972, April 11, 1972 --

A Yes, I believe so.

Q -- when you were questioned by Mr. Phillips. Do you recall that particular line of testimony?

Let me ask you, do you recall a question by Mr. Duke yesterday regarding --

MR. LAVIN: May I have a moment, your Honor?

Q I am sorry. The date on that was April 12, 1973.

Q '73?

Q '73.

Do you recall Mr. Duke asking you the following, were you asked this question and didyou give this answer:

"Q Where did you obtain the four kilograms from?

"A My partner at 430 Third Avenue, New York

City"?

Do you recall that?

A Do I recall Mr. Duke asking me that?

Q Yes.

A I do.

Q Do you recall your answer to that?

A Yes.

Q Can you tell us what it was?

MR. MITCHELL: Your Honor, I am going to object. It has already been told.

THE COURT: I think we have covered that problem.

MR. LAVIN: I am just trying to refresh his recollection, your Honor.

Q Do you also recall being asked the following questions and giving the following answers before that same grand jury at the same time --

A 1973?

Q Yes, April 12th.

MR. DUKE: I object, your Honor.

THE COURT: What are you objecting to? He hasn't asked a question yet.

Q Do you recall being asked these questions and giving these answers --

MR. DUKE: I object to his askingthe question, your Honor. I think it is improper. I know what is on there.

THE COURT: Hand up the question to me and I will see whether you can ask the question.

You may ask the question that I have marked, which will be the scope of the permissible inquiry. You may read those questions and those answers and ask him a question about them.

Q The April 12, 1973 grand jury, do you recall being --

THE COURT: We have all that. Were you asked these questions in addition to the ones that Mr. Duke asked you about:

Q "Q Was this on behalf of Vincent Pacelli that you were engaged in this narcotics transaction?

"A Yes."

A Yes.

Q "Q What type of narcotic was involved?

"A Cocaine."

Were you asked that question, did you give that answer?

A Yes.

Q "Q How much cocaine?

"A Four kilograms."

Were you asked thar question and did you give that answer?

A Yes.

MR. LAVIN: I have no further questions, your Honor.

THE COURT: All right. Step down.

(Witness excused.)

THE COURT: Next government witness.

MR. LAVIN: Susan Weyl.

THE COURT: I intend to recess in 20 minutes.

S U S A N W E Y L, called as a witness by by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAVIN:

Q Miss Weyl, in 1973 did you plead guilty to a count in an indictment which charged you with conspiracy to violate the federal narcotics laws?

A Yes, I did.

Q Were you sentenced on that charge?

A Yes, I was.

Q Can you tell us the sentence you received?

A A year's unconditional probation -- unsupervised probation.

Q Miss Weyl, do you know an individual named Vincent Pacelli, Jr.?

A Yes, I do.

Q Do you see him in the courtroom?

A Yes, I do.

Q Would you point him out to the court and the jury, please?

A Yes.

MR. LAVIN: May the record reflect the witness has identified the defendant Vincent Pacelli, Jr.?

THE COURT: All right.

Q Miss Weyl, in November and December of 1971 or the fall of 1971 where were you residing?

A 55 East 9th Street.

Q During that time did there come a time when Mr. Lipsky and Mr. Pacelli began using your apartment?

A Yes.

Q Can you tell us how they came to use your apartment?

A It came after a conversation with Mr. Pacelli and Mr. Lipsky that -- about the fact that I would like to make some money. I didn't know exactly how or I wasn't told exactly how at that time.

Q After that time did they start using your apartment?

A Yes.

Q Did you ever see Mr. Lipsky and Mr. Pacelli bring packages to your apartment?

A Yes.

Q Can you describe those packages for us, please?

A White -- platic bags, clear plastic bags.

Q Could you see what was inside them?

A White powder.

Q Who used to bring those to your apartment?

A Mr. Lipsky, most of the time.

Q Did Mr. Pacelli ever bring packages to your apartment?

A I don't remember if he did or not.

Q Did anyone ever tell you what was in those packages?

A Yes.

Q Who was that?

MRS. ROSNER: Objection, your Honor.

THE COURT: Received subject to connection.

A Excuse me.

Q Did anyone ever tell you what was in those packages?

A Yes.

Q Who was that?

A Both Mr. Lipsky and Mr. Pacelli.

Q What did they tell you was in those packages?

A Heroin and cocaine.

Q Did Mr. Pacelli or Mr. Lipsky tell you anything

about the quality or the purity of that heroin and cocaine?

MR. LA ROSSA: Object to the form of the question.

THE COURT: Yes. Sustained.

Did they ever tell you anything about these items?

THE WITNESS: That they were very pure.

BY MR. LAVIN:

Q Did Mr. Pacelli tell you that?

A I don't remember who told me that.

Q Did you ever see Mr. Pacelli and Mr. Lipsky do anything with that white powder?

A Yes.

Q Can you tell us what that was?

A They cut it with another substance, which I don't know what it was, and repackaged it.

Q Where did this take place?

A In my apartment.

Q Did there come a time when some locks were placed on your door?

A Yes.

Q How many locks?

A About 12.

Q And who did that?

A It was done by a locksmith.

Q Did you receive any money for keeping these packages in your apartment?

A Yes, I did.

Q Can you tell us approximately when this heroin and cocaine were stored in your apartment?

A How long?

Q Yes.

THE COURT: The period of time he is asking.

A About a month.

Q Do you recall when that was, that month?

A I believe it was December.

Q What year?

A December, '72, I think it was. I am not sure. I gave up the apartment a year ago this past summer.

THE COURT: A year ago this past summer would be what year?

THE WITNESS: Which was '72. So then it would have been, I imagine, December, January, or November, December, '71 or '2. I don't recall the exact year.

BY MR. LAVIN:

Q During the time that the packages of heroin and

cocaine were in your apartment did Mr. Pacelli and Mr. Lipsky visit your apartment frequently?

A Yes, they were there.

Q And were they taking packages out when they came?

A Yes.

Q Who did you first have the conversation with regarding the use of your apartment?

A Well, it began before any involvement with drugs. It began with Mr. Lipsky just -- not that he could use the apartment, but that I would -- if anyone called I would say he was living there. He didn't have a key at that time or anything.

Q Who did you ask about making money?

A There was a conversation between Mr. Pacelli and myself.

Q Do you recall that conversation?

A Just the fact that I would like to make some money and he said he would -- I don't know -- contact me or work out a way. I am not exactly sure of the conversation.

MR. LAVIN: I have no further questions, your Honor.

THE COURT: Mr. LaRossa?

MR. LA ROSSA: I have no questions for this witness.

THE COURT: Mr. Duke?

CROSS EXAMINATION

BY MR. DUKE:

Q Miss Weyl, this conspiracy charge, were you indicted for conspiring with Barry Lipsky and other people in this court in April of this year?

A Just one other person.

Q And is that the indictment that you pled guilty to?

A Yes, it was.

Q When did you plead guilty to that indictment?

A I believe it was in May, this past May.

Q How long after you were indicted did you plead guilty?

A I was indicted the beginning -- the end of March, beginning of April, somewhere around there.

Q A matter of a month or two after you were indicted. Can you tell me how long a period of time was it between the time you were indicted and the time that you pled guilty?

A I believe it was in May, the end of May, that I pled guilty.

A I believe it was in May, the end of May, that I pled guilty.

Q In March of April you were indicted?

A Yes.

Q One or two months between --

A One.

Q Is that the indictment and the convictin upon which you received a one-yaar suspended sentence?

A No, it wasn't --

Q One year probation?

A Unsupervised probation.

Q Were you under a sentence of one year probation prior to that, prior to your being indicted?

A No, not at the time I was indicted, no.

Q At some time prior to you being indicted were you under a sentence of one year's probation?

A Yes.

Q Whatwas the offense --

A It was a misdemeanor.

Q What was the offense for which you were on one year's probation?

A What was the offense?

Q Yes.

A Being under the influence of a barbiturate.

Q Do you recall when you received that sentence?

A It was a very long time ago.

Q Do you remember the year?

A No, I don't. It was about three or four years ago.

Q You have used cocaine, have you not, Miss Weyl?

A I did at one time.

Q When did you first start using cocaine?

A, I don't remember.

Q Was it prior to the time that you were convicted of possessing barbiturates?

A No.

Q Was it while you were on your first one-year probation?

A No.

Q It was after that?

A Yes.

Q Was it before 1970?

A I really don't remember exactly when I used it, and I didn't use it to any extent.

Q Did Mr. Lipsky provide you with any cocaine for your own use?

A At times, yes.

Q Were you ever in an apartment where both Benny Fabre and Mr. Lipsky lived in New York City?

A Not not that I remember.

Q Do you know or were you aware that Mr. Lipsky and Mr. Fabre lived together for a period of time?

A I don't remember. I have no recollection of that.

Q Do you know Benny Fabre?

A Yes.

Q Did you ever visit at an apartment where Benny Fabre lived?

A Yes.

Q When was that?

A Two years ago, somewhere around there.

Q The summer of --

THE COURT: She said somewhere around there.

A I said somewhere around there.

Q Somewhere around two years ago?

A I don't remember exactly. It was a long time ago and I don't remember.

Q Was that just one visit?

A Yes.

Q Wasn't Mr. Lipsky there?

A I don't recall.

Q When did you first meet Mr. Lipsky?

A I met him in a club, one of the clubs.

Q When?

A I don't remember the dates. A few years ago, a couple of years ago. I don't really remember dates or the years.

Q Was it as much as a year before this incident that you testified about on direct examination?

MR. LAVIN: Objection to the question, the form of the question.

A I really don't remember if it was as much as a year.

Q Have you seen Mr. Lipsky since March of 1972?

A Once.

Q When was that?

A I passed him in the hall today?

Q Today?

A Today. I passed him in the hall.

Q That is the only time since March of 1972 you have seen Mr. Lipsky?

A Yes.

Q I understand you to testify that the question of using your apartment first was raised by Mr. Lipsky?

MR. LAVIN: Objection, your Honor. That's not her testimony.

THE COURT: Is that a question?

MR. DUKE: That's a question.

Q Is that what you testified to on direct?

A It was -- no, he never used it. He asked me if -- I believe he was under probation at the time and he just needed an address and he asked me if he could give my telephone number and my address. He never stayed at my apartment.

Q Who did he ask you to give the telephone number and the address to?

A I never gave it to anybody. He did.

Q For what purpose? Did he tell you what the purpose was?

A He just said he needed a New York address.

Q Didn't you know that he had a New York address?

MR. LAVIN: Objection.

A No, not if he asked me. I didn't -- I surmised that he did not have one.

Q He didn't tell you that he needed to use your apartment because he was having trouble with his probation officer?

A All he said was that in -- "I need a New York

address because" -- I didn't go into detail. It had something to do with the fact that he was on probation and that he needed a New York address and telephone number and asked me in case anybody called would I say that he lived there. No one ever called and -- that was it.

Q No one ever called?

A Not that I recall, no.

Q You never spoke to his probation officer?

A Not that I recall.

Q You never told his probation officer, Mr. Lipsky's probation officer, that Mr. Lipsky lived with you at that address?

A I might have. Like I said, it was quite a while ago. I might have. Somebody might have called and I might have said that "Yes, Barry Lipsky lives in my -- at this address."

Q What is your best recollection, that you did say that or that you didn't.

A I am really not sure. I am really not sure. I think I might have.

Q Is that your best recollection, that you did?

A Yes, that somebody at one time had called.

Q You know who that somebody was, didn't you?

A No. They didn't say who it was. They -- just -- somebody called and said, "Does Barry Lipsky live here?" or "Is Barry Lipsky home?" and I said, "No, he is not."

Q This person did not identify -- was it a man or a woman?

A I don't remember.

Q It is your testimony that this person did not identify himself or herself?

A No. He just -- he or she -- I believe it was a man and he just said, "May I speak to Barry Lipsky." I said, "He is not home right now."

Q How many phone calls did Mr. Lipsky get on your phone?

A It was the only one.

Q Isn't it a fact, Miss Weyl, that it was a man that called and he identified himself as Mr. Lipsky's probation officer?

A No, not that I recall.

Q Do you deny that that happened?

MR. LAVIN: Objection.

A I said that -- to my recollection, he did not identify himself.

Q Were you present when the locksmith put these

bolts on the door?

A Yes, I was.

Q Did you have a discussion with the locksmith about what the bolts were needed for?

A No.

Q Did you have any discussion at all with the locksmith?

A No.

Q You didn't speak to him at all?

A No, I didnot.

Q Was anyone else present?

A Yes.

Q Who?

A Barry Lipsky.

Q Did Mr. Lipsky speak to the locksmith while the locksmith was doing his work?

A I imagine he did. I wasn't there the whole time.

Q While you were there what did Mr. Lipsky say to the locksmith?

A I did not listen. He just -- to my best recollection, he just told him where to put the locks on.

Q Is it your testimony that Mr. Lipsky never spent one,single night at 55 East 9th Street?

A No, he never spent a night there.

Q You are quite sure about that?

A I am positive.

MR. LAVIN: Objection.

Q Did you ever go out with Mr. Lipsky?

A Never.

Q You never did?

A No.

Q You never went to the Hippopotamus with Mr. Lipsky in 1971?

A I saw him there, I spoke to him there. I never went with him there.

Q Did you ever go with him to any other discotheque?

A I never went out with Mr. Lipsky.

Q You never entered any discotheque with Mr. Lipsky in your life?

A No.

Q Have you quit using cocaine?

A Yes.

Q When did you quit?

A A long time ago. I never liked it.

Q Could you approximate the year when you quit?

A It was about a year ago this past summer.

Q That would be the summer of 1972?

A Yes.

Q Did your attorney have discussions with anybody in the United States Government -- you have an attorney, do you not?

A Yes, I do.

Q What is his name?

A Mr. McCaffrey.

Q McCaffrey?

A Yes. He was present when I --

THE COURT: Wait for the question.

THE WITNESS: I am sorry.

THE COURT: What is the next question?

Q Were you arrested on this indictment that you were indicted on this past summer or spring, March or April? Were you arrested on that indictment?

A Well, I gave myself in, I turned myself in.

Q You just came to this courthouse?

A I was -- I know that I was indicted and I turned myself in.

Q You were not arrested?

A If that's what you mean by arrested, no, I was not arrested.

Q Had you retained this Mr. McCaffrey prior to

the time that you were indicted?

A No. I retained him when I was indicted.

Q After you were indicted?

A When I knew I was indicted, the minute I found out I retained a lawyer.

Q How did you find out?

A I believe that somebody -- I was not home at the time. I believe that somebody came to my parents' house and -- with a warrant for my arrest. I am not sure. I was not home at the time, I was not living home.

Q Where were you living?

A In New York.

Q When did you turnyourself in, that day or the following day?

A I think it was the following day or two days later.

Q Two days later?

A One or two days later.

Q When did you retain this attorney, Mr. McCaffrey?

A The minute I -- my father called me and told me that there were people at his house with a warrant for my arrest.

Q When you came down here to this courthouse did you meet Mr. McCaffrey here?

A No. I turned myself in in White Plains and they brought me down with my lawyer.

Q You mean your lawyer went to White Plains with you?

A He is -- he resides in White Plains, his practice is in White Plains.

Q The marshals brought you from White Plains to this courthouse?

A Yes, I came down to this courthouse.

Q What happened when you got to the courthouse?

A I went before a grand jury and told exactly what happened in my apartment.

Q The first thing that happened in this courthouse so far as you were concerned after you were indicted was that you went and testified to a grand jury, is that correct?

MR. LAVIN: Objection to the form of the question. It is misleading.

THE COURT: You may answer.

A I believe that's how it happened.

Q Did your attorney have any discussions with anybody in the United States Attorney's office

about your case?

A Yes. When I was present, yes.

Q When was the first such discussion that you were present at?

A When I came down here.

Q The first time?

A Yes.

Q At the time you were present on your first trip down here was the possibility of your pleading guilty discussed in your presence?

A Yes.

Q Was the possibility of your being a government witness discussed on that occasion?

A No. It was discussed that I would -- I had made up my mind to plead guilty because I was.

Q Was anything discussed at that meeting other than your pleading guilty?

A Yes. It was discussed what my participation was.

Q So you discussed facts at that first meeting, is that correct, facts about 1971?

A '71?

Q Did you testify that this business with the locks on the door occurred in 1971 or 1972, or do you

recall?

A I believe it was 1972.

THE COURT: Was it the year you moved or the year before? Which was it?

A I am just trying to figure out the year.

I believe it was between '71 and '72 that I lived there.

THE COURT: Are you going to be some time, Mr. Duke?

MR. DUKE: I am afraid I am, your Honor.

THE COURT: I am afraid we will suspend at this point until Monday morning at 10 o'clock, to be resumed in Room 618. The jury may go out.

Over the weekend, ladies and gentlemen, be sure that you keep an open mind on this case until you have heard all of the evidence in the matter. The session on Monday will be a short one. You will be excused not later than 3 o'clock on Monday.

Please be prompt. You will congregate on the sixth floor in the jury room for 618. If you are in doubt as to where that is, the clerk will go with you tonight to show you where that jury room is so that you can meet there. We are using the courtroom on Monday as indicated, and then on Wednesday, when we

resume after Monday, we will be back again in this room.

The jury may go out.

(Adjourned to 10 a.m., December 24, 1973.)

UNITED STATES OF AMERICA
v
BENJAMIN MALLAH et al.

73 CR 881

New York, December 24, 1973
10:00 a.m.

(Trial resumed.)

(In the robing room.)

MR. DUKE: I would like first of all to renew my application for any statements made by Miss Weyl to Mr. Lipsky's probation officer concerning where Mr. Lipsky was living during 1971, and it seems to me it is 3500 material on this witness. And secondly, after the court recessed on Friday, there was a huge commotion, Miss Weyl was screaming and hollering and I think we are entitled to a disclosure from the Government as to what happened. I think it is clearly relevant to the witness' competency.

THE COURT: Why don't you ask her.

MR. DUKE: I think it unfair to the defendant to require him to ask the witness about circumstances in the presence of the jury.

THE COURT: It is rather unusual for you to make such a suggestion. What was the commotion?

MR. DUKE: Miss Weyl was screaming and hollering and somebody grabbed her by the arm, one of the marshals,

and all I heard was screaming and hollering. Somebody told me she fell down. Mr. Lavin ran in there, I think Mr. Clark ran in there. They know what happened.

THE COURT: I am not going to pay much attention to that kind of talk.

What about this other subject here. Just go back a moment, Mr. Reporter. Let me understand what the request was.

(Record read.)

THE COURT: You call that a renewal? I had never heard that before. You asked previously for statements made by Mr. Lipsky and I got in touch with the probation officer and ascertained from him that he had never taken a statement from Mr. Lipsky and he had nothing other than the direct matter that appeared in the Florida report of which you received a total copy.

MR. DUKE: Your Honor, it is my understanding that the probation officer had conversations -- who was assigned to Mr. Lipsky's probation was transferred from Florida to New York and he had a probation officer I understand from his testimony, beginning about November 1971, in this building, and it is my understanding that that probation officer had conversations with Mr. Lipsky and Miss Weyl concerning Mr. Lipsky's occupation, where he was living, and other things

of that sort.

THE COURT: What are the grounds of your statement?

MR. DUKE: The grounds of --

THE COURT: The grounds of your statement and the basis of your belief.

MR. DUKE: Mr. Lipsky testified, I believe, that he told his probation officer he was living in Miss Weyl's apartment.

THE COURT: Now you are slurring over something. Are you talking about a Florida probation officer or a New York probation officer?

MR. DUKE: A probation officer located in this building. I believe his name is Canon or Gannon.

THE COURT: Is that the only ground of your statement?

MR. DUKE: Miss Weyl testified that she had -- she had a conversation with someone on the telephone. She denied that he introduced himself as a probation officer.

THE COURT: Have you any further ground for your allegation?

MR. DUKE: I can't think of any at the moment, your Honor.

THE COURT: Those are grossly insufficient for the purpose.

Did you want something?

MR. LaROSSA: I want to reiterate what happened on Friday, because I heard an awful lot of what occurred with Miss Weyl, too, and my request is under the provisions of Brady v Maryland. If Mr. Lavin knows of anything the witness stated in the back that has any relevancy under that line of decisions I think it must be disclosed at this time.

THE COURT: Is there anything of an exculpatory nature that you know of whatsoever?

MR. LAVIN: No, your Honor.

THE COURT: Anything else?

We will go ahead.

(In open court; jury not present.)

THE COURT: Before the jury comes in, Mr. LaRossa asked me this morning whether it would be convenient to go straight through instead of having a lunch break, and I suggested that what we might do is to go straight through until two o'clock and stop for the day. Is that going to be a hardship on anybody? If not, I will canvass the jury and if that is satisfactory to them, we will stop an hour earlier.

(Jury present.)

THE COURT: Ladies and gentlemen, good morning.

One of the counsel made the suggestion that all of us might prefer an earlier closing this afternoon if we would

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sit straight through, say until two o'clock, if you don't consider that a hardship. We will have a recess in between instead of breaking for lunch at one, coming back at two, and then going on for an hour. If there is no objection from the members of the jury and you prefer it, I would be very happy to have the session run from now until two o'clock and end for the day then.

Is that all right with you?

We will do it that way.

(Continued on following page.)

SUSAN WEYL resumed.

CROSS EXAMINATION CONTINUED

BY MR. DUKE:

Q Miss Weyl, your apartment at 55 East 9th Street, was that an apartment in an apartment house? An apartment building?

A Yes.

Q How many floors were there on the building?

A I don't know.

Q Can you approximate?

A I'm guessing, 10.

Q What floor did you live on?

A Fifth floor.

Q Could you approximate how many poeple lived in the building?

A No.

Q How many apartments there were in the building?

A No.

MRS. ROSNER: Your Honor, I am having some difficulty observing the witness. Could she be requested to sit forward.

THE COURT: I think that chair is fixed.

Q How long did you live in your apartment at 55 East 9th Street?

A About a year and a half.

Q Commencing about when?

A I don't remember the date. I believe it was February, '71 or '72. I think it was '71.

Q When did you move out?

A No, it was '71, and I stayed there until -- wait a minute. I moved out August, '72, I believe.

Q Is there a doorman at the building?

A Yes.

Q Twenty-four hours a day?

A Yes.

Q Miss Weyl, what do you do for a living?

A I am unemployed.

Q How long have you been unemployed?

A A long time. I don't have to work.

Q When did you last work?

A About September, October.

Q What year?

A This year.

Q What did you do, what kind of work?

A I was a -- I worked with a financial consultant.

Q How long had you worked with a financial consultant?

A For about four months.

Q Prior to that, had you been employed immediately prior to going to work for the financial consultant?

A No.

Q Were you employed in 1971?

A I don't remember the dates. I really don't remember the dates. I imagine I was.

Q In the past three years how much of that time have you been employed?

A Often.

Q More than half?

A No.

Q How do you live now?

A I am wealthy.

Q You are personally wealthy?

A Yes.

Q Were you personally wealthy in 1971?

A No.

Q In 1972?

A I don't remember.

I have always been wealthy.

Q Were you wealthy in 1971?

A Yes. Subsidized by my father.

Q Miss Weyl, you never told anybody in the govern-

ment, any agents or U. S. attorneys, you never gave them any information prior to April of this year, did you, concerning your use of your apartment in 1971?

A Yes, I did.

Q When did you give them that information?

A When I was indicted. It wasn't information. I told the truth.

Q Was that March or April of 1973?

A Yes.

Q That's the first time you gave anybody any information, a law enforcement officer?

A Yes.

Q Have you discussed this -- discussed the information that you testified about on direct -- with Mr. Feffer of the U. S. Attorney's office?

A I had lunch with him once.

Q With Mr. Feffer? Was anyone else present?

A Yes.

Q Who else?

A An agent.

Q What was his name?

A Ted Mandoga.

Q When did you have lunch with Mr. Feffer and Mr. Mandoga?

A After I first went on trial.

Q Did you discuss the case with Mr. Feffer?

A No.

Q Have you ever seen Mr. Feffer or met him on any other occasion than this lunch?

MR. LAVIN: Objection, your Honor. The form of the question only.

THE COURT: You may answer whether there was any other meeting. Just say yes or no, did you ever meet Feffer other than on the lunch occasion?

A Yes.

Q Where was that?

A I don't remember the restaurant.

Q Another restaurant?

A I said I don't remember the restaurant.

Q The lunch you testified about I assume was in a restaurant, is that correct?

A Yes.

Q Was there another occasion where you were with Mr. Feffer in a restaurant?

A No.

Q Where was it that you saw Mr. Feffer on the other occasion, other than lunch?

A Just passing in this building.

Q Did you ever discuss the case with him?

A No.

Q Did you ever discuss your case with him?

A No.

Q What other assistant United States attorneys have you had discussions with since your indictment?

A Mr. Phillips and Mr. Velie.

Q Did you discuss your testimony or the fact --

MR. DUKE: Withdrawn.

Q Did you discuss the facts that you testified about with them?

A Yes, I did.

Q On one occasion or more than one occasion?

A A few times with my lawyer present.

Q Was your lawyer present on all occasions that you discussed the case with Mr. Phillips --

A Yes, he advised me to tell the truth.

Q And Mr. Velie -- was your lawyer present on all occasions?

A Excuse me?

Q Was your lawyer present on all occasions on which you had these discussions with Mr. --

A As far as I know, yes.

Q Have you discussed the case with Mr. Lavin?

A Yes.

Q Was your lawyer present there?

A No.

Q When did you first discuss the case with Mr. Lavin?

A I believe it was Monday last.

Q Monday last?

A Tuesday last.

Q Have you had any discussions with Mr. Lavin since Tuesday last?

A No.

Q No conversations of any kind?

MR. LAVIN: Objection, your Honor.

THE COURT: She may answer that question.

After last Tuesday have you had any conversation with Mr. Lavin?

THE WITNESS: No.

Q Have you discussed the facts that you testified about with any agents, narcotics agents?

A Yes. They asked me what my part --

Q Which agents have you discussed the facts with?

A I told you Ted Handoga.

Q Is that all?

A Stu Stromfeld.

Q Any others?

A Bob Clark.

Q Any others?

A No.

Q Haveyou had any discussions with Mr. Handoqa, Mr. Stromfeld or Mr. Clark since last Thursday?

A Not about the case, no.

Q Have you had discussions with them about anything?

A Just to say hello, how are you.

Q In preparation for your testifying on Friday did anyone show you any prior testimony that you had given?

A Yes.

Q Who did that?

A I am sorry. Prior to when?

Q Prior to you taking the stand on Friday did anyone, say in the week prior to your taking the stand, did anyone show you any testimony that you had given in the past?

A Yes.

Q Who did that?

A Mr. Lavin.

Q What did he show you?

A Exactly what I said.

Q How many different documents did he show you?

A He didn't show me a document. He just asked me the same questions you are.

Q My question was whether anybody had shown you any testimony, and I meant by that documents.

A No, no documents.

Q Have you ever seen any documents that purported to reflect statements that you have made concerning this case?

A I don't understand. What are you saying?

Q Have you ever seen any documents, papers that purport to reflect statements that you have made concerning --

A No, that's my lawyer's job.

Q What was your phone number at 55 East 9th Street?

A I don't remember.

Q Miss Weyl, prior to your pleading guilty to the indictment of last summer, did you know that you could go to prison for a long time?

A Yes, I did.

Q When you were sentenced did somebody from the United States attorney speak to the judge in your

behalf?

A He was there in the courtroom when I pleaded guilty.

Q Did he say --

A Or when I was sentenced.

Q Did he say anything to the judge in your behalf?

THE COURT: Who is "he"?

Q Who was it --

THE COURT: I say who are you referring to as "he"?

MR. DUKE: I am referring to somebody from the United States Attorney's office.

THE COURT: Make that clear, please.

Q Did somebody from the United States Attorney's office make a statement in your behalf when you were sentenced?

A Not when I was sentenced, no.

Q At any other time prior to that?

A Oh, yes. I am sorry. Yes, when I was sentenced.

Q Who was that?

A Mr. Velie.

THE WITNESS: Am I allowed to ask a question?

THE COURT: Why don't you just answer his questions.

The witness wants to know whether she is allowed to ask a question.

Why don't you let Mr. Duke finish his questions. You ask your lawyer about --

THE WITNESS: I already did. I know it is not allowed.

BY MR. DUKE:

Q Miss Weyl, has your memory been refreshed over the weekend as to whether or not you, in 1971, lived with Barry Lipsky?

A I told you I never lived with Barry Lipsky. He never stayed at my house.

Q Did you live during 1971 or did someone live with you by the name of Barry?

A No. He never stayed at my house.

Q Miss Weyl, has anybody told you that your probation that you are now under can be revoked?

A Excuse me?

Q You are now under probation?

A Yes.

Q Has anybody told you that your probation can be revoked and you can go to prison?

A No.

Q Did you attend college, Miss Weyl?

A Yes.

Q Where?

A University of Miami.

Q How long were you at the University of Miami?

A Two years.

Q Did you know Barry Lipsky when you were in Miami?

A No, he was quite a bit older than I was. I met Barry in New York.

Q When did you meet Barry Lipsky?

A In a club. In a discotheque.

Q When?

A I don't remember.

MR. LAVIN: Objection, your Honor. We have been over this Friday.

THE COURT: I think we have been over it. It may be a preliminary question.

BY MR. DUKE:

Q Miss Weyl, prior to the time when Mr. Lipsky moved narcotics into your apartment, had you met Mr. Lipsky prior to that?

A Yes.

Q And had he been to your apartment prior to that?

A Yes.

Q Had he been there alone?

A Yes. But it has nothing to do with drugs.

Q He was in your apartment on some matter other than narcotics?

A Yes.

Q Was it a social visit?

A No. He asked me to do him a favor.

Q Did Mr. Lipsky make any social visits to your apartment prior to the time he moved the drugs?

A Never.

Q Miss Weyl, did you testify in this courthouse last summer in a trial?

A Yes.

Q I show you Defendant's Exhibit N for identification and ask you if you will read to yourself the bracketed portions.

A A social --

THE COURT: There is no question pending.

Q Did you on that occasion -- wereyou asked this question, these questions, and did you give these answers. This is in connection with --

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